

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 408

CITY BANK FARMERS TRUST COMPANY, AS TRUSTEE OF A TRUST UNDER THE LAST WILL AND TESTAMENT OF ANGIER B. DUKE, DECEASED, FOR THE BENEFIT OF ANTHONY NEWTON DUKE, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

No. 409

CITY BANK FARMERS TRUST COMPANY, AS TRUSTEE OF A TRUST UNDER THE LAST WILL AND TESTAMENT OF ANGIER B. DUKE, DECEASED, FOR THE BENEFIT OF ANGIER B. DUKE, JR., PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 9, 1940.

CERTIORARI GRANTED FEBRUARY 19, 1941.

BLANK PAGE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 408

CITY BANK FARMERS TRUST COMPANY, AS TRUSTEE OF A TRUST UNDER THE LAST WILL AND TESTAMENT OF ANGIER B. DUKE, DECEASED, FOR THE BENEFIT OF ANTHONY NEWTON DUKE, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

No. 409

CITY BANK FARMERS TRUST COMPANY, AS TRUSTEE OF A TRUST UNDER THE LAST WILL AND TESTAMENT OF ANGIER B. DUKE, DECEASED, FOR THE BENEFIT OF ANGIER B. DUKE, JR., PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX.

	Page
Proceedings before United States Board of Tax Appeals.....	1
Docket Entries (Docket No. 76031).....	1
Docket Entries (Docket No. 76046).....	4
Petition (No. 76031)	7
Exhibit "A"—Excerpts from last will of Angier B. Duke...	12
Exhibit "B"—Letter from Commissioner of Internal Revenue and statement attached	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 3, 1941.

	Page
Proceedings before United States Board of Tax Appeals—Continued	
Answer (No. 76031)	17
Petition (No. 76046)	18
Exhibit "A"—Excerpts from last will of Angier B. Duke....	23
Exhibit "B"—Letter from Commissioner of Internal Revenue and statement attached	24
Answer (No. 76046)	28
Motion for consolidation	29
Findings of fact and opinion, Disney, M.	31
Concurring opinion, Mellott, M.	42
Dissenting opinion, Leech, M.	43
Order denying motion for reopening and reconsideration	44
Decision (No. 76031)	45
Decision (No. 76046)	46
Petition for review (No. 76031)	47
Notice of filing of petition for review	53
Petition for review (No. 76046)	54
Notice of filing of petition for review	60
Stipulation for consolidation of cases	62
Stipulation of facts	64
Exhibit "A"—Last will and testament of Angier B. Duke...	72
Exhibit "B"—Decree of Surrogate's Court and certain schedules of the account in each of the trusts	82
Statement of evidence	101
Stipulation as to evidence	101
Testimony of Crosby T. Smith	104
Order approving statement of evidence	115
Respondent's Exhibits:	
"A"—Federal income tax return on Form 1040 for the year 1931 of the trust under the will of Angier B. Duke for Angier B. Duke, Jr., marked in evidence at folio 342	116
"B"—Federal income tax return on Form 1040 for the year 1931 of the trust under the will of Angier B. Duke for Anthony Newton Duke, marked in evidence at folio 342	118
"C"—Fiduciary return of income for the year 1931 of the trust under the will of Angier B. Duke for Angier B. Duke, Jr., marked in evidence at folio 343	121
"D"—Fiduciary return of income for the year 1931 of the trust under the will of Angier B. Duke for Anthony Newton Duke, marked in evidence at folio 343	123
Petitioner's Exhibits:	
1—Ledger sheet entitled "Principal Anthony Newton Duke" showing receipts and disbursements of the principal of the trust for the year 1931, marked in evidence at folio 323	125
2—Seven ledger sheets entitled "Income Anthony Newton Duke" covering receipts and disbursements of income for the year 1931, marked in evidence at folio 324	127

Proceedings before United States Board of Tax Appeals—Continued
Statement of evidence—Continued

Petitioners' Exhibits—Continued

Page

3—Ledger sheet entitled "Principal Angier B. Duke" showing receipts and disbursements of the principal of the trust for the benefit of Angier B. Duke, Jr. for the year 1931, marked in evidence at folio 325	141
4—Seven ledger sheets entitled "Income Angier B. Duke" covering receipts and disbursements of income for the year 1931 in the trust for the benefit of Angier B. Duke Jr., marked in evidence at folio 325	143
5—Two sheets entitled "Trust for Anthony Newton Duke" showing diary entries for the year 1931, marked in evidence at folio 326.....	157
6—Two sheets entitled "Trust for Angier B. Duke, Jr." showing diary entries for the year 1931, marked in evidence at folio 326.....	163
Stipulation relating to printing of record.....	169
Praecept for record	172
Certificate of clerk	175
Proceedings in U. S. C. C. A., Second Circuit.....	176
Opinion, Hand, J.	176
Judgment, Case No. 158	181
Judgment, Case No. 159	181
Clerk's certificate	182
Orders allowing certiorari	183

BLANK PAGE

UNITED STATES BOARD OF TAX APPEALS.

Docket No. 76031.

1

**CITY BANK FARMERS TRUST COMPANY, as Trustee of a
Trust under the Last Will and Testament of Angier
B. Duke, deceased, for the benefit of Anthony Newton
Duke,**

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

2

Docket Entries.

APPEARANCES:

**For Petitioner: GEORGE H. CRAVEN, ESQ., ROLLIN BROWNE,
ESQ.**

For Respondent: J. R. JOHNSTON, ESQ., E. M. WOOLF, ESQ.

1934

**May 4—Petition received and filed. } Taxpayer notified:
(Fee paid.)**

3

May 4—Copy of petition served on General Counsel.

June 12—Answer filed by General Counsel.

June 20—Copy of answer served on taxpayer.

1937

**Dec. 9—Notice issued placing proceeding on New York
Calendar.**

1938

Feb. 26—Hearing set April 25, 1938, New York City.

Docket Entries.

- 4 Apr. 26—Hearing had before Mr. Disney on merits. Submitted. Motion of petitioner to consolidate dockets 76031 and 76046 granted. Stipulation of facts and notice of death of counsel for petitioner filed. Petitioner's brief due 5/26/38. Respondent's brief due June 27, 1938. Reply due 7/11/38.

May 16—Transcript of hearing of April 26, 1938 filed.

May 26—Brief filed by taxpayer. 5/26/38 copy served on General Counsel.

July 9—Motion for leave to file brief nunc pro tunc as of June 26, 1938 filed by General Counsel. Brief lodged by General Counsel. 7/12/38 granted.

5

Aug. 4—Motion for leave to file reply brief filed by taxpayer—reply brief lodged. 8/5/38 granted.

Aug. 8—Copy of motion and reply brief served on General Counsel.

1939

Jan. 4—Findings of fact and opinion rendered—Richard L. Disney, Division 4. Decision will be entered under Rule 50.

Jan. 25—Computation of deficiency filed by General Counsel.

Jan. 27—Hearing set Feb. 15, 1939 on settlement.

Feb. 3—Motion for rehearing and reconsideration, and memorandum in support of motion, filed by taxpayer.

6

Feb. 13—Motion for 30 days continuance upon the computation under Rule 50 filed by taxpayer.

Feb. 14—Motion granted to 3/15/39.

Feb. 16—Order that motion for reopening and reconsideration be denied entered.

Mar. 15—Hearing had before Mr. Arundell on settlement under Rule 50—respondent's recomputation not contested—referred to Mr. Disney for decision.

Mar. 23—Decision entered—R. L. Disney, Division 4.

Docket Entries.

- June 22—Petition for review by U. S. Circuit Court of Appeals, Second Circuit, with assignments of error filed by taxpayer. 7
- June 22—Proof of service filed by taxpayer.
- Aug. 15—Motion for extension to 9/15/39 to prepare and transmit record filed by taxpayer.
- Aug. 15—Order enlarging time to 9/15/39 to prepare and transmit record entered.
- Aug. 24—Order from U. S. Circuit Court of Appeals, Second Circuit, granting stipulation to consolidated dockets 76031 and 76046 into one record, filed.
- Sept. 7—Agreed statement of evidence lodged by taxpayer.
- Sept. 7—Praecipe with proof of service thereon filed—no counter praecipe will be filed. 8
- Sept. 8—Agreed statement of evidence approved and ordered filed.
- Sept. 13—Order enlarging time for transmission and delivery of record to Sept. 30, 1939, entered.
- 9

Docket Entries.

10

UNITED STATES BOARD OF TAX APPEALS.**Docket No. 76046.**

**CITY BANK FARMERS TRUST COMPANY, as Trustee of Trust
under the Last Will and Testament of Angier B. Duke,
deceased, for the benefit of Angier B. Duke, Jr.,
Petitioner,**

vs.

11

**COMMISSIONER OF INTERNAL REVENUE,
Respondent.**

APPEARANCES:

**For Petitioner: GEORGE H. CRAVEN, ESQ., ROLLIN BROWNE,
ESQ.**

**For Respondent: J. R. JOHNSTON, ESQ., D. HURD HUDSON,
ESQ., E. M. WOOLF, ESQ.**

1934

12

**May 4—Petition received and filed. Taxpayer notified.
(Fee paid.)**

May 4—Copy of petition served on General Counsel.

June 12—Answer filed by General Counsel.

June 19—Copy of answer served on taxpayer.

1937

**Dec. 9—Notice issued placing proceeding on New York
Calendar.**

1938

Feb. 26—Hearing set April 25, 1938, New York, N. Y.

Docket Entries.

Apr. 26—Hearing had before Mr. Disney on merits. Sub- 13
mitted. Motion of petitioner to consolidate dock-
ets 76031 and 76046 granted. Entry of appear-
ance of Rollin Browne, Stipulation of facts and
notice of death of counsel for petitioner filed.
Petitioner's brief due 5/26/38—respondent's brief
due 6/27/38—reply due 7/11/38.

May 16—Transcript of hearing of April 26, 1938 filed.

May 26—Brief filed by taxpayer. 5/26/38 copy served on
General Counsel.

July 9—Motion for leave to file brief nunc pro tunc as of
June 26, 1938 filed by General Counsel. Brief
lodged. 7/12/38 granted.

Aug. 4—Motion for leave to file reply brief filed by tax- 14
payer—reply brief lodged. 8/5/38 granted.

Aug. 8—Copy of motion and reply brief served on Gen-
eral Counsel.

1939

Jan. 4—Findings of fact and opinion rendered—Richard
L. Disney, Division 4. Decision will be entered
under Rule 50.

Jan. 25—Computation of deficiency filed by General Coun-
sel.

Jan. 27—Hearing set Feb. 15, 1939 on settlement.

Feb. 3—Motion for rehearing and reconsideration, and 15
memorandum in support of motion, filed by tax-
payer.

Feb. 13—Motion for 30 days continuance on the computa-
tion under Rule 50 filed by taxpayer.

Feb. 14—Motion granted to 3/15/39.

Feb. 16—Order that motion to reopen and reconsider be
denied, entered.

Mar. 15—Hearing had before Mr. Arundell on settlement
under Rule 50. Respondent's recomputation not
contested. Referred to Mr. Disney for decision.

Docket Entries.

- 16 Mar. 23—Decision entered—R. L. Disney, Division 4.
June 22—Petition for review by U. S. Circuit Court of Appeals, Second Circuit, with assignments of error filed by taxpayer.
June 22—Proof of service filed by taxpayer.
Aug. 15—Motion for extension of time to Sept. 15, 1939 to prepare and transmit record filed by taxpayer.
Aug. 15—Order enlarging time to Sept. 15, 1939 to prepare and transmit record entered.
Aug. 24—Order from U. S. Circuit Court of Appeals, Second Circuit, granting stipulation to consolidate dockets 76031 and 76046 into one record filed.
- 17 Sept. 7—Agreed statement of evidence lodged.
Sept. 7—Praecipe with proof of service thereon filed. No counter praecipe will be filed.
Sept. 8—Agreed statement of evidence approved and ordered filed.
Sept. 13—Order enlarging time for transmission and delivery of record to Sept. 30, 1939, entered.

Petition.

19

UNITED STATES BOARD OF TAX APPEALS.**Docket No. 76031.**

**CITY BANK FARMERS TRUST COMPANY, as Trustee of a trust
under the Last Will and Testament of Angier B. Duke,
deceased, for the benefit of Anthony Newton Duke,
Petitioner,**

—against—**COMMISSIONER OF INTERNAL REVENUE,****Respondent. 20**

The above-named petitioner, City Bank Farmers Trust Company, a corporation, as trustee of a trust under the last will and testament of Angier B. Duke, deceased, for the benefit of Anthony Newton Duke, hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency bearing the symbols "IT:AR:A-2 KVN-60D" and dated March 7, 1934, and as a basis for this proceeding alleges as follows, upon information and belief:

21

1. The said Angier B. Duke died on September 3, 1923, a resident of the City, County and State of New York, leaving a last will and testament wherein and whereby he created a trust for the benefit of Anthony Newton Duke and wherein and whereby he appointed City Bank Farmers Trust Company (formerly known as The Farmers' Loan and Trust Company), as trustee. The said last will and testament was duly admitted to probate in the Surrogates' Court of New York County, New York, to which jurisdiction in that behalf belonged, on September 18, 1923, and

Petition.

22 on or about that date the said City Bank Farmers Trust Company duly qualified as trustee under said will. The said City Bank Farmers Trust Company since said date has been and is now the duly appointed qualified and acting trustee under the last will and testament of the said Angier B. Duke, deceased. The address of the said City Bank Farmers Trust Company is No. 22 William Street, New York, N. Y. A copy of the material portions of said will is hereto attached, marked "Exhibit A", and made a part hereof.

23 2. The notice of deficiency, a copy of which is hereto attached, marked "Exhibit B", and made a part hereof, was mailed to the petitioner on March 7, 1934.

3. The taxes in controversy are income taxes for the calendar year 1931. The Commissioner has determined a deficiency in the sum of \$2,202.51, and the petitioner asks that this Board determine an overassessment in the sum of \$7,986.96, making the total taxes in controversy \$10,189.47.

4. The determination of taxes set forth in the said notice of deficiency is based upon the following errors:

21 (a) The respondent has erroneously disallowed on the petitioner's return for 1931 a credit of \$2,936.69, or such other sum as may be proper, and a deduction of \$2,157.02, or such other sum as may be proper, to which it is entitled for taxes paid by it to the Kingdom of Great Britain on dividends received in that year from British corporations.

(b) The respondent has erroneously failed to allow as a deduction on the petitioner's return for 1931 a deduction in the sum of \$38,641.71 to which it is entitled for commissions paid for the services of the trustee in managing the said trust.

Petition.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows: 25

(a) (1) The petitioner in the year 1931, as part of its undistributable and undistributed income which was taxable to it, received dividends of \$20,484.37 which were declared and paid in that year on stock which it held of the British-American Tobacco Co., Ltd., a British corporation, and dividends of \$1,280.05 which were declared and paid in that year on stock which it held of the Tobacco Securities Trust Co., Ltd., a British corporation, a total of \$21,764.42 in dividends on stocks of British corporations. The petitioner paid income taxes of \$5,093.71 to the Kingdom of Great Britain in 1931 on said dividends. The said British taxes were and are allowable as a credit against the 1931 Federal income tax of the petitioner to an amount not exceeding the same proportion of said Federal income tax for said year which the decedent's net income for said year from sources without the United States bears to its total net income for said year, pursuant to the provisions of Section 131 of the Revenue Act of 1928, and the balance of said British taxes not allowable as a credit were and are allowable as a deduction in computing net income, pursuant to the provisions of Section 23(c) of said Act. 26

(2) The respondent has erroneously determined that the said taxes were assessed against and paid by the said British corporations, and not by the petitioner; that therefore, said taxes are not allowable as a credit and deduction to the petitioner, but that the petitioner is taxable only on dividends in the sum of \$16,670.71, representing the difference between the said dividends of \$21,764.42 which were declared and paid by said British corporations, and the amount of British taxes in the sum of \$5,093.71 which were paid by the petitioner thereon. The petitioner alleges that although it is true that the Kingdom of Great Britain imposes its income tax on the income and profits of its 27

Petition.

28 corporations, the law imposing such tax provides that the corporations may recoup such tax from their stockholders by deducting it from the dividends declared and paid by them; that the stockholders of such corporations are required to include the gross amount of the dividends declared and paid in their tax returns, and that such stockholders are entitled to credit against their tax liabilities the amounts of such taxes so deducted and withheld at the source from their dividends. The petitioner therefore alleges that the said British taxes of \$5,093.71 were paid and borne by it and that the credit of \$2,936.69 and the deduction of \$2,157.02 which were claimed on its said
 29 return on account of said British taxes should be allowed in full.

(b) The petitioner in the year 1931 paid to itself as trustee of said trust commissions in the sum of \$38,641.71 for its services in conserving and managing the affairs of the said trust estate. The said commissions were computed on the basis of the principal amount of said trust, but the petitioner alleges that they are properly allowable as a deduction in computing the income which is taxable to the said trust entity.

WHEREFORE, the petitioner prays that this Board may
 30 hear the proceeding and determine:—

(a) That the British taxes in the sum of \$5,093.71 which were deducted and paid at the source on dividends on stocks which the petitioner held in British corporations were paid by the petitioner.

(b) That the petitioner is entitled to a credit of \$2,936.69, or such other sum as may be proper, and a deduction of \$2,157.02, or such other sum as may be proper, in computing his net taxable income for the year 1931, by reason of said British taxes of \$5,093.71.

Petition.

(c) That the petitioner is entitled to an additional deduction of \$38,641.71 for trustee's commissions paid in the year 1931. 31

(d) That there is no deficiency in the tax of the petitioner for the year 1931.

(e) That there is an overassessment of \$7,986.96 in favor of the petitioner for the year 1931.

CITY BANK FARMERS TRUST COMPANY,
as Trustee of a trust under the last will and
testament of Angier B. Duke, deceased, for
the benefit of Anthony Newton Duke,

By ELIOT ATWATER,
Trust Officer. 32

RUSSELL L. BRADFORD,
GEORGE H. CRAVEN,
Counsel for Petitioner,
Office and P. O. Address,
22 Exchange Place,
New York, N. Y.

TAYLOR, BLANC, CAPRON & MARSH,
22 Exchange Place,
New York, N. Y.
Of Counsel. 33

State of New York,
County of New York—ss.:

ELIOT ATWATER, being duly sworn, deposes and says that he is a Trust Officer of City Bank Farmers Trust Company, the petitioner named in the foregoing petition; that he has

Exhibit A, Annexed to Petition.

34 read the said petition and knows the contents thereof and that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

ELIOT ATWATER.

Sworn to before me this
3rd day of May 1934.

THOMAS I. FITZGERALD,
Notary Public, New York County,
N. Y. Co. Clks. No. 105, Reg. No. 5F314.
35 Commission expires March 30, 1935.
(Seal)

EXHIBIT A, ANNEXED TO PETITION.

The entire will of which Exhibit A is a part is printed herein at pages 72 to 81, inclusive, as Exhibit A, Annexed to Stipulation of Facts.

EXHIBIT B, ANNEXED TO PETITION.

37

TREASURY DEPARTMENT
WASHINGTON

Office of
Commissioner of Internal Revenue

Address Reply to
Commissioner of Internal Revenue
and refer to

Trustee, Anthony Newton Duke,
u/w A. B. Duke,
City Bank Farmers Trust Co., Trustee,
22 William Street,
New York, New York.

38

Sirs:

You are advised that the determination of your income tax liability for the year 1941, discloses a deficiency of \$2,202.51 as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928 notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of the deficiency.

39

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this form will expedite the closing of your return by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the form, or on the date

Exhibit B, Annexed to Petition.

40 assessment is made, whichever is earlier; WHEREAS IF THIS FORM IS NOT FILED, interest at the rate of 6% per annum will accumulate.

Respectfully,

GUY T. HELVERING,
Commissioner.

By CHARLES T. RUSSELL,
Deputy Commissioner.

Encloses:
Statement
Form 870

STATEMENT

IT:AR:A-2
KVN-60D

In re: Trustee Anthony Newton Duke,
n/w A. Duke,
City Bank Farmers Trust Company, Trustee,
22 William Street,
New York, New York

42

Income Tax Liability

Year	Income Tax Liability	Income Tax Assessed	Deficiency
1931	\$15,078.79	\$12,876.28	\$2,202.51

The amount of \$2,936.79 claimed as a credit on line 54 as income tax paid to a foreign country has been disallowed as a credit. The deduction of \$2,157.02 claimed as the "balance of British Tax not claimed item #54"

Exhibit B, Annexed to Petition.

has been disallowed. Foreign income to be reported under item 11 has been computed as follows: 43

Gross foreign income	\$21,764.42
Less:	
Tax withheld	5,093.71
Net foreign income to be reported, item 11(a)	\$16,670.71
Amount reported on return	21,764.42
Decrease in item 11	\$ 5,093.71

There is no provision in the revenue laws permitting an individual owning stock in a foreign corporation to claim as a deduction or a credit, income tax assessed against a foreign corporation. This office holds that the income tax purported to have been withheld from dividend distributions by the British corporation was in fact the liability of the payor corporation. Therefore, the only amount that should be reported in gross income is the amount actually received, that is, \$16,670.71. Correspondingly, the amount of \$2,936.69 claimed as a credit and the deduction of \$2,157.02 have been disallowed. 44

Computation of Adjusted Net Income

45

Ordinary net income reported on return	\$119,046.95
Deduction for balance of British tax disallowed	2,157.02
Total	\$121,203.97
Less:	
Decrease in item 11	5,093.71
Adjusted ordinary taxable income	\$116,110.26
Capital net loss	\$ 872.61

Exhibit B, Annexed to Petition.

46

Computation of Tax

Adjusted ordinary income		\$116,110.26
Less:		
Dividends	\$104,055.62	
Personal exemption	1,500.00	105,555.62
		<hr/>
Balance subject to normal tax		\$ 10,554.64
Normal tax at 11½% on \$4,000.00		\$ 60.00
Normal tax at 3% on \$4,000.00		120.00
Normal tax at 5% on \$2,554.64		127.73
Surtax on \$116,110.26		14,882.05
		<hr/>
47 Total		\$ 15,189.78
Less:		
Tax at 12½% on \$872.61	\$109.09	
Tax paid at source	1.90	110.99
		<hr/>
Income tax liability		\$ 15,078.79
Income tax assessed		12,876.28
		<hr/>
Deficiency in tax		\$ 2,202.51

48

Answer.**UNITED STATES BOARD OF TAX APPEALS.****Docket No. 76031.**

49

CITY BANK FARMERS TRUST COMPANY, as Trustee of a trust under the Last Will and Testament of Angier B. Duke, deceased, for the benefit of Anthony Newton Duke,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent. 50

The respondent, by his attorney, Robert H. Jackson, General Counsel, Bureau of Internal Revenue, for answer to the petition of this taxpayer, filed May 4, 1934, admits and denies as follows:

1, 2, 3. Admits the averments contained in paragraphs 1, 2, and 3 of the petition.

4. Denies the averments contained in paragraph 4 of the petition.

5. For lack of sufficient information upon which to form a belief, denies the remaining averments of the petition and will require proof thereof upon the hearing of this appeal. 51

WHEREFORE, it is prayed that the taxpayer's appeal be denied.

(Signed) ROBERT H. JACKSON,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:

HAROLD ALLEN,
Special Attorney,
Bureau of Internal Revenue.

Petition.

52

UNITED STATES BOARD OF TAX APPEALS.**Docket No. 76046.**

CITY BANK FARMERS TRUST COMPANY, as Trustee of a
trust under the Last Will and Testament of Angier B.
Duke, deceased, for the benefit of Angier B. Duke, Jr.,
Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

53

The above-named petitioner, City Bank Farmers Trust Company, a corporation, as trustee of a trust under the last will and testament of Angier B. Duke, deceased, for the benefit of Angier B. Duke, Jr., hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency bearing the symbols "IT:AR:A-2 KVN-60D" and dated March 7, 1934, and as a basis for this proceeding alleges as follows, upon information and belief:

54

1. The said Angier B. Duke died on September 3, 1923, a resident of the City, County and State of New York, leaving a last will and testament wherein and whereby he created a trust for the benefit of Angier B. Duke, Jr. and wherein and whereby he appointed City Bank Farmers Trust Company (formerly known as The Farmers' Loan and Trust Company), as trustee. The said last will and testament was duly admitted to probate in the Surrogates' Court of New York County, New York, to which jurisdiction in that behalf belonged, on September 18, 1923, and on or about that date the said City Bank Farmers Trust

Petition.

Company duly qualified as trustee under said will. The said City Bank Farmers Trust Company since said date has been and is now the duly appointed qualified and acting trustee under the last will and testament of the said Angier B. Duke, deceased. The address of the said City Bank Farmers Trust Company is No. 22 William Street, New York, N. Y. A copy of the material portions of said will is hereto attached, marked "Exhibit A", and made a part hereof. 55

2. The notice of deficiency, a copy of which is hereto attached, marked "Exhibit B", and made a part hereof, was mailed to the petitioner on March 7, 1934. 56

3. The taxes in controversy are income taxes for the calendar year 1931. The Commissioner has determined a deficiency in the sum of \$2,199.01, and the petitioner asks that this Board determine an overassessment in the sum of \$7,994.56, making the total taxes in controversy \$10,193.57.

4. The determination of taxes set forth in the said notice of deficiency is based upon the following errors:

(a) The respondent has erroneously disallowed on the petitioner's return for 1931 a credit of \$2,930.94, or such other sum as may be proper, and a deduction of \$2,163.70, or such other sum as may be proper, to which it is entitled for taxes paid by it to the Kingdom of Great Britain on dividends received in that year from British corporations. 57

(b) The respondent has erroneously failed to allow as a deduction on the petitioner's return for 1931 a deduction in the sum of \$38,641.06 to which it is entitled for commissions paid for the services of the trustee in managing the said trust.

Petition.

- 58 . 5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

59 (a) (1) The petitioner in the year 1931, as part of its undistributable and undistributed income which was taxable to it, received dividends of \$20,488.10 which were declared and paid in that year on stock which it held of the British-American Tobacco Co., Ltd., a British corporation, and dividends of \$1,280.28 which were declared and paid in that year on stock which it held of the Tobacco Securities Trust Co., Ltd., a British corporation, a total of \$21,768.38 in dividends on stocks of British corporations. The petitioner paid income taxes of \$5,094.64 to the Kingdom of Great Britain in 1931 on said dividends. The said British taxes were and are allowable as a credit against the 1931 Federal income tax of the petitioner to an amount not exceeding the same proportion of said Federal income tax for said year which the decedent's net income for said year from sources without the United States bears to its total net income for said year, pursuant to the provisions of Section 131 of the Revenue Act of 1928, and the balance of said British taxes not allowable as a credit were and are allowable as a deduction in computing net income, pursuant to the provisions of Section 23 (c) of said Act.

60

(2) The respondent has erroneously determined that the said taxes were assessed against and paid by the said British corporations, and not by the petitioner; that therefore, said taxes are not allowable as a credit and deduction to the petitioner, but that the petitioner is taxable only on dividends in the sum of \$16,673.74, representing the difference between the said dividends of \$21,768.38 which were declared and paid by said British corporations, and

Petition.

the amount of British taxes in the sum of \$5,094.64 which were paid by the petitioner thereon. The petitioner alleges that although it is true that the Kingdom of Great Britain imposes its income tax on the income and profits of its corporations, the law imposing such tax provides that the corporations may recoup such tax from their stockholders by deducting it from the dividends declared and paid by them; that the stockholders of such corporations are required to include the gross amount of the dividends declared and paid in their tax returns, and that such stockholders are entitled to credit against their tax liabilities the amounts of such taxes so deducted and withheld at the source from their dividends. The petitioner therefore alleges that the said British taxes of \$5,094.64 were paid and borne by it and that the credit of \$2,930.94 and the deduction of \$2,163.70 which were claimed on its said return on account of said British taxes should be allowed in full.

(b) The petitioner in the year 1931 paid to itself as trustee of said trust commissions in the sum of \$38,641.06 for its services in conserving and managing the affairs of the said trust estate. The said commissions were computed on the basis of the principal amount of said trust, but the petitioner alleges that they are properly allowable as a deduction in computing the income which is taxable to the said trust entity.

WHEREFORE, the petitioner prays that this Board may hear the proceeding and determine:

(a) That the British taxes in the sum of \$5,094.64 which were deducted and paid at the source on dividends on stocks which the petitioner held in British corporations were paid by the petitioner.

Petition.

64

(b) That the petitioner is entitled to a credit of \$2,930.94, or such other sum in excess thereof as may be proper, and a deduction of \$2,163.70, or such other sums as may be proper, in computing his net taxable income for the year 1931, by reason of said British taxes of \$5,094.64.

(c) That the petitioner is entitled to an additional deduction of \$38,641.06 for trustee's commissions paid in the year 1931.

(d) That there is no deficiency in the tax of the petitioner for the year 1931.

65

(e) That there is an overassessment of \$7,994.56 in favor of the petitioner for the year 1931.

CITY BANK FARMERS TRUST COMPANY,
as Trustee of a trust under the last will and
testament of Angier B. Duke, deceased, for
the benefit of Angier B. Duke, Jr.,

By **ELIOT ATWATER,**
Trust Officer.

RUSSELL L. BRADFORD,
GEORGE H. CRAVEN,

Counsel for Petitioner,
Office and P. O. Address,
22 Exchange Place,
New York, N. Y.

66

TAYLOR, BLANC, CAPRON & MARSH,
22 Exchange Place,
New York, N. Y.,
Of Counsel.

Exhibit A, Annexed to Petition.

State of New York,
County of New York—ss.:

67

ELIOT ATWATER, being duly sworn, deposes and says that he is a Trust Officer of City Bank Farmers Trust Company, the petitioner named in the foregoing petition; that he has read the said petition and knows the contents thereof and that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

ELIOT ATWATER.

68

Sworn to before me this
3rd day of May, 1934.

THOMAS I. FITZGERALD,
Notary Public,
New York County.

N. Y. Co. Clks. No. 105, Reg. No. 5F314.

Commission expires March 30, 1935.

(Seal) -

~~EXHIBIT A, ANNEXED TO PETITION.~~

69

The entire will of which Exhibit A is a part is printed herein at pages 72 to 81, inclusive, as Exhibit A, Annexed to Stipulation of Facts.

EXHIBIT B, ANNEXED TO PETITION.

70

TREASURY DEPARTMENT
Washington

Office of
Commissioner of Internal Revenue
Address Reply To
Commissioner of Internal Revenue

Mar. 7 1934

Trust Angier B. Duke, Jr.,
u/w A. B. Duke,
c/o City Bank Farmers Trust Co., Trustee,
22 William Street,
New York, New York

71

Sirs:

You are advised that the determination of your income tax liability for the year 1931, discloses a deficiency of \$2,199.01 as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of the deficiency.

72

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this form will expedite the closing of your return by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier; WHEREAS IF THIS

Exhibit B, Annexed to Petition.

FORM IS NOT FILED, interest at the rate of 6% per annum 73
will accumulate.

Respectfully,

GUY T. HELVERING,
Commissioner.

By CHARLES T. RUSSELL,
Deputy Commissioner.

Enclosures:
Statement
Form 870

74

STATEMENT

IT:AR:A-2
KVN-60D

In re: Trust Angier B. Duke, Jr.,
u/w A. B. Duke,
c/o City Bank Farmers Trust Co., Trustee,
22 William Street,
New York, New York.

75

Year	Income Tax Liability		
	Income Tax Liability	Income Tax Assessed	Deficiency
1931	\$15,066.00	\$12,866.99	\$2,199.01

The amount of \$2,930.94 claimed as a credit on line 54 for income tax paid to a foreign country has been disallowed. The deduction of \$2,163.70 claimed on line 18 as the balance of British tax not claimed in item 54, has

Exhibit B, Annexed to Petition.

- 76 been disallowed. The amount of foreign income to be reported under item 11 has been computed as follows:

Gross foreign income, item 11	\$21,768.38
Less	
Tax withheld by payor corporation	5,094.64
Net foreign income	\$16,673.74
Amount reported, item 11 of return	21,768.38
Decrease in income	\$ 5,094.64

- 77 There is no provision in the revenue laws permitting an individual owning stock in a foreign corporation to claim as a deduction or a credit, income tax assessed against a foreign corporation. This office holds that the income tax purported to have been withheld from dividend distributions by the British corporation was in fact the liability of the payor corporation. Therefore, the only amount that should be reported in gross income is the amount actually received, that is, \$16,673.74. Correspondingly, the amount of \$2,930.94 claimed as a credit and the deduction of \$2,163.70 have been disallowed.

Computation of Adjusted Net Income

78 Ordinary net income reported on return	\$119,200.80
Deduction disallowed	2,163.70
Total	\$121,364.50
Less:	
Decrease in foreign income	5,094.64
Adjusted ordinary income	\$116,269.86
Capital loss	\$ 1,295.04

Exhibit B, Annexed to Petition.

Computation of Tax

79

Adjusted ordinary income - \$116,269.86

Less:

Dividends \$104,069.73

Personal exemption 1,500.00 105,569.73

Balance subject to normal tax \$ 10,700.13

Normal tax at 1½% on \$4,000.00 \$ 60.00

Normal tax at 3% on \$4,000.00 120.00

Normal tax at 5% on \$2,700.13 135.01

Surtax on \$116,269.86 14,913.97

Total \$ 15,228.98 80

Less:

Tax at 12½% on \$1,295.04 \$161.88

Tax paid at source 1.10 162.98

Income tax liability \$ 15,066.00

Income tax assessed • 12,866.99

Deficiency in tax \$ 2,199.01

81

Answer.

82

UNITED STATES BOARD OF TAX APPEALS**Docket No. 76046.**

CITY BANK FARMERS TRUST COMPANY, as Trustee of a
trust under the Last Will and Testament of Angier B.
Duke, deceased, for the benefit of Angier B. Duke, Jr.,
Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

83

The respondent, by his attorney, Robert H. Jackson, General Counsel, Bureau of Internal Revenue, for answer to the petition of this taxpayer, filed May 4, 1934, admits and denies as follows:

1, 2, 3. Admits the averments contained in paragraphs 1, 2, and 3 of the petition.

4. Denies the averments contained in paragraph 4 of the petition.

5. For lack of sufficient information upon which to form a belief, denies the remaining averments of the petition and will require proof thereof upon the hearing of this appeal.

84

WHEREFORE, it is prayed that the taxpayer's appeal be denied.

(Signed) ROBERT H. JACKSON,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:

HAROLD ALLEN,
Special Attorney,
Bureau of Internal Revenue.

HA-afh 6-12-34

Motion for Consolidation.

85

UNITED STATES BOARD OF TAX APPEALS**Docket No. 76031.**

CITY BANK FARMERS TRUST COMPANY, as Trustee of a
Trust under the Last Will and Testament of Angier B.
Duke, deceased, for the benefit of Anthony Newton
Duke,

Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,

86

Respondent.

Docket No. 76046.

CITY BANK FARMERS TRUST COMPANY, as Trustee of a
Trust under the Last Will and Testament of Angier B.
Duke, deceased, for the benefit of Angier B. Duke, Jr.,

Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,

Respondent. 87

Now come the petitioners in the above-entitled proceedings, by their undersigned counsel, and respectfully represent that the same issue and the same facts are involved in the two above-entitled proceedings and that it would result in much saving of time to the Board and to counsel for the respective parties if the cases should be consolidated

Motion for Consolidation.

88 for hearing. The petitioners accordingly respectfully move that the Board enter an order consolidating said cases.

Dated April 26, 1938.

GEORGE H. CRAVEN,
Counsel for Petitioners,
20 Exchange Place,
New York, N. Y.

No objection.

89 J. P. WENCHEL,
Chief Counsel for
Bureau of Internal Revenue,
Counsel for Respondent.

(Seal)

Filed at Hearing,
April 26, 1938.
Granted, Apr. 26, 1938,
(s) R. L. DISNEY,
Member U. S. Board of Tax Appeals.

Findings of Fact and Opinion.

UNITED STATES BOARD OF TAX APPEALS

91

CITY BANK FARMERS TRUST COMPANY, AS TRUSTEE OF A TRUST UNDER THE LAST WILL AND TESTAMENT OF ANGIER B. DUKE, DECEASED, FOR THE BENEFIT OF ANTHONY NEWTON DUKE, PETITIONER, *v.* COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

CITY BANK FARMERS TRUST COMPANY, AS TRUSTEE OF A TRUST UNDER THE LAST WILL AND TESTAMENT OF ANGIER B. DUKE, DECEASED, FOR THE BENEFIT OF ANGIER B. DUKE, JR., PETITIONER, *v.* COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

92

Docket Nos. 76031, 76046. Promulgated January 4, 1939.

In 1931 the petitioner, as trustee, pursuant to a court decree entered in connection with an intermediate accounting, paid to itself and charged to corpus the trustee commissions allowed under a state statute for receiving principal and paying it out. *Held*, that the trustee was not carrying on a trade or business, and therefore commissions are not deductible as ordinary and necessary business expense.

G. H. Carven, Esq., and Rollin Browne, Esq., for the petitioner.

93

J. R. Johnston, Esq., and D. Hurd Hudson, Esq., for the respondent.

These proceedings were consolidated for hearing and report and involve the redetermination of deficiencies of \$2,202.51 and \$2,199.01 in income tax for 1931 of the petitioner as trustee of the respective trusts, as to which petitioner contends for overassessments of \$7,986.96 and \$7,994.56, respectively. An issue raised in each proceeding

Findings of Fact and Opinion.

- 94 respecting a credit taken for foreign taxes has been abandoned. The parties disposed of another issue by stipulating the amount to be included in the taxable income of each trust for dividends received from a foreign corporation. The remaining issue, common to both cases, is whether certain trustee's commissions are deductible from gross income of the trust. The stipulation of facts filed in the cases is adopted by reference as part of our findings of fact.

FINDINGS OF FACT.

- 95 The petitioner, City Bank Farmers Trust Co., as trustee of two trusts under the will of Angier B. Duke, is a New York corporation engaged in the business of a trust company in the State of New York. It qualified in September 1923 as trustee under the will of Angier B. Duke, deceased, and since then has acted as such.

The will of the decedent created two trusts, one for the benefit of Angier B. Duke, Jr., and the other for the benefit of Anthony Newton Duke. The petitioner received the property of the trusts in the amount of \$3,823,027.79 in each trust in February 1926.

- 96 On January 2, 1931, the Surrogate's Court of New York, which had jurisdiction of the trust estates, issued a decree in a proceeding instituted by the petitioner in 1930 for settlement of an intermediate accounting for the period from February 26, 1926, to December 31, 1929, authorizing the petitioner to retain and pay to itself as trustee out of the existing corpus of the respective trust estates, as commissions to which it was entitled under the provisions of the decedent's will, the sums of \$38,641.71 and \$38,641.06. The commissions were computed pursuant to the provisions of section 285 of the Surrogate's Court Act of New York, on the basis of principal received and paid out by the petitioner as trustee. Subsequently, during the same months, the petitioner paid the sums authorized by the court to

Findings of Fact and Opinion.

itself as trustee out of the principal of the respective trusts. 97
 The amounts so paid were not deducted by the petitioner in income tax returns filed for the taxable year, but petitioner asks in the petition, in each proceeding, for a determination of overassessment in accordance with such payments. Although deductions for other commissions with respect to the current transactions within the taxable year for receiving and paying out income are not listed in the income tax reports filed for the two trusts, and are not mentioned in the deficiency notices, the parties are in agreement that such commissions have been allowed by the respondent. The report made to the Surrogate by petitioner showed commissions retained each year by the petitioner on account of income received and paid out, during the period covered by the report to the Surrogate, the amounts being 98
 \$10,663.22 as to one trust and \$10,674.60 as to the other.

The report filed for the period from February 26, 1926, to December 31, 1929, showed an increase of corpus in one trust of \$21,635.44 and in the other of \$21,580.44, and income received of \$962,359.54 as to one of the trusts and \$963,277.83 as to the other; charged expense against principal in the one trust in the amount of \$12,806.75 and in the other of \$12,798.62; charged expense against income of \$29,608.74 as to the one trust and \$29,815.82 as to the other, which amounts of expense in each case were entirely for payment of state and Federal taxes, except \$2.50 for notary 99
 fees and \$1 for cost of Federal stamps on the transfer of 250 rights in Marland Oil Co. For 1931 the income of one estate was \$126,729.09 from interest and dividends (nothing being reported under the heading "Net profit from trade or business"), with loss on sale of securities of \$872.61, while as to the other estate the income was \$126,460.28 from interest and dividends (nothing being reported under the heading "Net profit from trade or business"), with loss on sale of securities of \$1,295.06. The loss of \$872.61 was taken upon the sale for a total price of \$86,670.38 of nine

Findings of Fact and Opinion.

100 items of bonds and stocks, all acquired in 1926, except two items acquired in 1928 in the total amount of \$238.10. The loss of \$1,295.06 was taken upon the sale of twelve items of bonds and stocks in the total sum of \$90,430.42, all of the items being purchased in 1926, except one item of \$138.91 purchased in 1928. For the year 1931 the income tax report as to the one trust asks deduction of \$5.50 (in addition to taxes paid) and the other asks deduction of \$6.11 (in addition to taxes paid). The ledger of the trust for Angier B. Duke, Jr., for 1931 shows total expense items of \$13.27 charged against principal, being cost of Federal stamps and cost of insurance and postage upon bonds, and \$14.68 being cost of collection of coupons shown as expense against income; also \$30.52 costs and disbursements taxed in the Surrogate's decree of January 2, 1931. The ledger for 1931 for the trust for Anthony Newton Duke shows expense items against principal totaling \$13.03, being the cost of transfer stamps and insurance and postage on transfer of bonds; and a total of \$15.71 expense against income, being cost of collection of coupons, and \$1 for transfer stamps; also \$30.53 costs and disbursements taxed in the Surrogate's decree of January 2, 1931.

101 In 1931 the petitioner, as trustee of each trust, claimed deductions of about \$5,200, and distributed about \$6,300 to the beneficiary thereof out of the gross income, leaving in each case approximately \$115,000 for distribution to the beneficiary when he should become of age. For the taxable year the trustee reported a tax liability of approximately \$13,000, all of which was paid in 1932. The petitioner, as trustee of the trusts, at all times important, kept its books and rendered its income tax returns on the cash basis.

102 The provisions of the decedent's will distributed to the trustee for each of his two sons one-fourth of his residuary estate in trust to collect and receive the income, revenues, and profits, and to apply and distribute them to the support, education, and maintenance of the son for his life,

Findings of Fact and Opinion.

and after his death for the support, education and maintenance of his lineal descendants, payments, applications, and distributions during minority to be under the uncontrolled discretion of the trustee, with specific provision that: 103

The said Trustee shall have power to hold, manage and invest, and from time to time as need be, to re-invest the properties held in said Trust for the benefit and advantage of the beneficiaries thereof in such good and productive stocks, bonds or mortgages as will produce, if possible, a sure and regular income.

The said Trustee and its successors shall have power to retain any investments made by me in my lifetime without liability for loss or shrinkage, or to change the property received by it under this will into other property as it deems best for the respective beneficiaries, and to that end it shall have power to sell, assign, transfer, exchange, deliver and convey any property at any time, and it shall invest the proceeds of all such sales and exchanges in any property it thinks best; but in all investments I charge it and its successors to be more careful as to the security of the funds than as to the acquisition of higher rates of interest, my desire being to have my property prudently and securely managed rather than hazarded in what may promise great gains. 104 105

* * * * *

Said Trustee shall have power to pay all taxes, levies and assessments which may be validly imposed upon the Trust Estate, or any part thereof or in respect thereof, or which may be incurred in the exercise of any of the powers conferred by this will, as well as all costs, charges and expenses of administering this Trust, which shall include adequate insurance, necessary repairs, and compensation to the Trustee for its service as such.

Findings of Fact and Opinion.

106 The duties of the petitioner as trustee of the trusts consisted in general of causing its investment committee to review several times each year the securities comprising the corpus of the trust; selling securities and reinvesting the proceeds in other stocks and bonds; collecting interest and dividends on securities; paying expenses of the trusts; distributing income to beneficiaries; keeping the books of account of the trusts; rendering statements to the interested parties; and preparing and filing income tax returns. The petitioner was trustee of about 300 other trusts involving similar duties.

107 The current diary of action taken by the trustee in the estate of Anthony Newton Duke shows 18 items throughout the year 1931, while the current diary in the estate of Angier B. Duke, Jr., shows 19 items. With one exception, the two diaries are duplicates. The investments referred to are all bonds and stocks.

Generally trustees administering estates under the laws of New York do not make application to the court for trustee's commissions until reason exists for filing an accounting with the court. The accounting was filed in 1930 in order to obtain the court's construction of provisions of the decedent's will.

OPINION.

108

DISNEY: The petitioner contends and respondent denies that petitioner, as trustee, was carrying on a trade or business within the meaning of the statute. This question has received our attention many times, and of course it depends largely upon the situation in the particular case, being considered. Petitioner urges similarity particularly to *John H. Watson, Jr., et al., Trustees*, 35 B. T. A. 706, while respondent points out especially *George Vanderbilt Trust*, 36 B. T. A. 967. In the former case facts are summarized in the statement that "The estate was large and the peti-

Findings of Fact and Opinion.

tioners were given wide powers of management, control, sale and reinvestment of the trust corpus", in addition to the statement that the gross income was \$762,640.85, all of which, except \$56,018.64, was interest on Federal and state obligations, exempt from income tax. Question as to whether the trustees were carrying on a business under section 23 (a) of the Revenue Act of 1932 apparently was not an issue in the case until raised in respondent's brief. We held that commissions allowed by the probate court to the trustees for services performed in the management of the trust estate were expenses incurred in carrying on trade or business. In *George Vanderbilt Trust, supra*, the trustees paid attorneys' fees and claimed deduction under section 23 (a) of the Revenue Act of 1928 as ordinary and necessary expenses incurred in carrying on a trade or business. The only facts appearing were that by the will executors were appointed with power to invest and reinvest the principal, to collect the income, to pay taxes and expenses, and to distribute to beneficiaries, but how these powers were exercised did not appear, except as to the distributions. Taking the view that the trustees may have been mere passive conservators of an investment trust, we held that carrying on a trade or business had not been shown.

109

110

Here, the trust instrument confers powers not dissimilar to those involved in *George Vanderbilt Trust, supra*, but we think with some limitations of importance to a decision of the question at hand; for here there is distributed to the trustee for each trust one-fourth of the testator's residuary estate for purposes in effect as follows: To collect and receive the income, revenues and profits, and to pay, apply, and distribute same to and for the support, education, and maintenance of the beneficiary for life and, after his death, per capita for the support, education, and maintenance of his lineal descendants, payments, applications, and distributions during minority to be within the uncontrolled dis-

111

Findings of Fact and Opinion.

112 cretion of the trustee. It is specifically provided that the trustee shall have the power "to hold, manage and invest, and from time to time as need be, to re-invest the properties held in said Trust for the benefit and advantage of the beneficiaries thereof in such good and productive stocks, bonds or mortgages as will produce, if possible, a sure and regular income." Any investments made by the testator may be retained without liability for loss or shrinkage, or the trustee may change the property into other property as it deems best, with power to sell, exchange, etc., and invest the proceeds in any property it thinks best, but the testator charges the trustee "to be more careful as to the security of the funds than as to the acquisition of higher rates of interest, my desire being to have my property prudently and securely managed rather than hazarded in what may promise great gains."

113 — We conclude from the above language that investment and reinvestment, though within the discretion of the trustee, must be limited to "stocks, bonds or mortgages as will produce, if possible, a sure and regular income." In fact, the record is plain that this is what was done. The increase reported by the trustee for the period from February 26, 1926, to December 31, 1929, differs only \$55 in the two trusts (one reporting \$21,635.44 and the other \$21,580.44), indicating that the two trusts were handled almost exactly the same, and the same conclusion is drawn from the fact that there is less than \$1,000 difference (out of approximately \$963,000) in the amount of income received in the two estates during the time covered by the report and from the fact that there is a difference of only about \$8 in the amount of expenses chargeable against principal out of approximately \$12,800 of such expenses in each estate, while the expenses chargeable against income in the two estates varied only about \$200 out of approximately \$29,000 each. It is apparent that these estates were handled by the trustee in a routine manner. Moreover, it is stipu-

114

Findings of Fact and Opinion.

lated that the gross income of both trusts, approximately \$126,000 in the case of each, was entirely from interest and dividends for the year 1931 and the report filed by the trustee for the period from February 26, 1926, to December 31, 1929, shows that, out of \$29,608.74 of expenses chargeable against income, only \$1 was expense of anything other than payment of taxes, state or Federal, and \$2.50 for notary fees. One dollar was for cost of Federal and state stamps for transfer of 250 rights of Marland Oil Co. In the other estate, exactly the same situation is shown. Out of \$29,815.82 expense chargeable against income, \$1 was spent for Federal stamps on the transfer of 250 rights of Marland Oil Co., \$2.50 for notary fees, and the rest was expense of state or Federal taxes. Income tax reports for 1931 ask (in addition to taxes) only \$5.50 as to the one trust, and \$6.11 as to the other, under the heading of deductions. In other words, those are the amounts of expenses incurred by the two estates in those years which could possibly be classed as expense of business; while reference to the ledgers kept by the two estates reflecting income and expense throughout the year 1931 indicates only a very few dollars of expense, and most of this for small items of a few cents each for collection charges on coupons. In the estate of Angier B. Duke, Jr., the total expense shown by the ledger for the year (except \$30.52 taxed in the surrogate's decree) is \$27.95, all of which is shown to be the cost of Federal stamps, mailing bonds, and collection of coupons. The same is true in the trust for Anthony Newton Duke, where we find (except for \$30.53 taxed in the surrogate's decree) a total of \$28.74, all of which consists of small items of Federal stamps, cost of mailing bonds and coupon collection charges. Moreover, as above seen, the report of the trustees for the period from February 26, 1926, to December 31, 1929, demonstrates only one transaction in each estate—the transfer of 250 rights in Marland Oil Co., and the report for 1931 for one trust

— Findings of Fact and Opinion.

118 shows an income of \$126,729.09, and a loss on sale of securities of \$872.61 from nine sales of securities, seven of which were purchased in 1926, and two in 1928, with a total sale price of \$86,670.38; while the other trust reports an income of \$126,460.28, and a loss of \$1,295.06 from sale of twelve securities, all but one purchased in 1926, the other in 1928, with a total sale price of \$90,430.42. Plainly, securities were being held, not dealt in.

The above facts demonstrate conclusively to us that this is a case of passive investment and not of carrying on a business, for not only is the trustee limited in its investments, but it is cautioned in effect to be a safe investor rather than a participant in trade or business, and, plainly carrying out the testator's injunctions, it conducts no business, because it has, as above seen, no expenses of conducting business other than the collection of coupons and mailing bonds, amounting to a few dollars, and an even more negligible amount for transfer stamps or notary fees. In *George Vanderbilt Trust, supra*, there was no evidence to convince us of business done or trade carried on; here the evidence is pointed and positive that, practically speaking, the only activity of the trust was to watch investments and collect coupons. In *John H. Watson, Jr., et al., Trustees, supra*, the trustees had "wide powers" of management and investment as contrasted with the narrow powers herein, and the present question apparently arose only when brief was filed by respondent. We do not think that case decisive of the issue which arises from the evidence herein. Extensive authority need not be compiled to demonstrate that a mere passive investor, collecting interest and clipping coupons, and making a very few reinvestments, is not engaged in trade or business. *Alice G. Kales*, 34 B. T. A. 1046; *Helen W. Heilbroner*, 34 B. T. A. 1200. That situation here affirmatively appears, as well as the limitations indicated by the trustor, amounting to a direction to trustee to be passive investor rather than to engage in trade or business.

Findings of Fact and Opinion.

In *Estate of Hetty H. R. Green*, 27 B. T. A. 1195, trustees under a testamentary trust had power to rent, lease, sell, or convey real estate, to invest and keep invested the proceeds of the property, to change investments, and to manage and control the trust estate and exercise all powers necessary to that end. The income received during one of the taxable years was derived from 75 capital transactions, 71 of which consisted in receiving money paid for redemption of bonds at maturity, and the other 4 comprising sales of 1 lot of stock, 2 mortgages and a parcel of land. Whenever property was acquired it was taken as an investment, never for the speculative purpose of deriving profit from a sale thereof later on. We commented that, with certain exceptions, the net income of a trust shall be computed in the same manner as that of an individual and that petitioner was not engaged in buying and selling real estate and securities with a view to profit on the transaction, that out of 75 capital transactions only 4 were other than reception of money to redeem bonds at maturity, and that they were occasional, isolated transactions, not a business regularly carried on. We further noted that the language employed by the testatrix to safeguard the trustee property clearly indicated that the purpose was to conserve the estate corpus and to protect it from the hazards of active business enterprise. "The whole tenor of the instrument distinctly negatives any idea that the estate should regularly carry on a business for profit, and the evidence shows, we think, that none was carried on." We therefore concluded and held that net loss deductions were properly disallowed. The very few transactions shown by the record in the instant proceeding are of the same nature as those considered in the cited proceeding and our comment upon the language of the testatrix indicating a purpose to conserve the estate, rather than carry on a business for profit, can be precisely applied to the settlor's language in the trusts here at hand.

121

122

123

Findings of Fact and Opinion.

124

We therefore hold that the trustee in the case of each trust here involved was not carrying on any trade or business, and that the expenses, viz., trustee's commissions paid from principal, sought to be deducted as ordinary and necessary expense of carrying on trade or business under section 23 (a) of the Revenue Act of 1928, were properly denied by the respondent. This conclusion makes it unnecessary to pass upon the other question presented as to whether the fact that the commissions in question were charged to corpus of the trust, under the Surrogate's order, prevents their classification as business expense.

Reviewed by the Board.

125

Decision will be entered under Rule 50.

VAN FOSSAN and ARNOLD dissent.

126

MELLOTT, concurring: Although agreeing with the majority, that the petitioners were not engaged in a trade or business, I am of the opinion that, even if they were, the particular commissions in issue are not deductible. They were paid by the petitioners to themselves in 1931 out of trust corpus, and apparently were never considered by them as deductible items until after substantial deficiencies had been determined against them, the correctness of which they now concede. They had been allowed under section 285 of the Surrogate's Court Act of New York on the basis of *principal* received and paid out. They were nonrecurring items, chargeable to and deductible from corpus. If application had been made by them to the Surrogate's Court in 1926, when the corpus was paid over to them, they would have been entitled to have received at least 50 percent of the commissions at that time; *In Re Bushe*, 227 N. Y. 85, for, under the construction by the New York courts of the section under which the allowances were made,

Findings of Fact and Opinion.

they became entitled to that portion of the allowances immediately upon receipt of the property. 127

In my opinion the commissions in controversy could not be said to be "ordinary and necessary expenses paid * * * in carrying on any trade or business" even if the petitioners were engaged in a trade or business.

SMITH, TURNER, and HARRON concur in the above.

LEECH, dissenting: The respondent admittedly allowed deductions of commissions, similar to those now contested, in his determination of the present deficiencies. He asks for no increased deficiencies because of error in that action. But if that was right, it would seem so, only, if the petitioning bank, as trustee of each of the two trusts, was carrying on business during the taxable year. However, respondent disallows the deduction of similar additional commissions which are now in controversy, because, he says, the bank, as such trustee, was not carrying on business. In my judgment, his position is wholly inconsistent. Either the petitioning bank, as trustee for these trusts, was carrying on business during the taxable year, or it was not. If it was, not only those commissions, the deduction of which was allowed by the respondent, are deductible, but the contested additional commissions are likewise deductible. I think the bank, as such trustee, was more than a passive conservator of investments and was carrying on business during the taxable year. The record, to me, clearly establishes that fact. In my opinion, the additional commissions, now in dispute, are deductible as well as those the deduction of which respondent has allowed and is not now contesting. 128 129

ARUNDELL and TYSON agree with this dissent.

(Seal)

130

**Order Denying Motion for Reopening and
Reconsideration.**

**UNITED STATES BOARD OF TAX APPEALS,
WASHINGTON.**

Docket Nos. 76031, 76046.

**CITY BANK FARMERS TRUST COMPANY, as Trustee of a trust
under the Last Will and Testament of Angier B. Duke,
deceased, for the Benefit of Anthony Newton Duke,**

131

**CITY BANK FARMERS TRUST COMPANY, as Trustee of a trust
under the Last Will and Testament of Angier B. Duke,
deceased, for the Benefit of Angier B. Duke, Jr.,**
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petitioner having filed motion for reopening and reconsideration in the above proceedings, and said motion and memorandum in support thereof having been carefully considered, it is

132

ORDERED: That said motion be and the same is hereby denied. *Kane (formerly Heilbronner) v. Commissioner*, 100 Fed. (2d) 382.

R. L. DISNEY,
Member.

Dated: Washington, D. C., February 16, 1939.

Decision.

133

**UNITED STATES BOARD OF TAX APPEALS,
WASHINGTON.****Docket No. 76031.**

**CITY BANK FARMERS TRUST COMPANY, as Trustee of a trust
under the Last Will and Testament of Angier B. Duke,
deceased, for the Benefit of Anthony Newton Duke,**
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

134

Pursuant to the findings of fact and opinion of the Board, promulgated January 4, 1939, the respondent on January 25, 1939, filed notice and computation under Rule 50. Copy of said notice and computation having been served on the petitioner, together with notice of hearing, and the proceeding having been called for settlement from the Day Calendar of March 15, 1939, at which time no objection to the proposed computation was offered, it is

ORDERED AND DECIDED: That there is a deficiency in income tax for the year 1931 in the amount of \$2,202.51.

135

Enter:

R. L. DISNEY,
Member.
(Seal)

Decision.

136

**UNITED STATES BOARD OF TAX APPEALS,
WASHINGTON.**

Docket No. 76046.

**CITY BANK FARMERS TRUST COMPANY, as Trustee of a trust
under the Last Will and Testament of Angier B. Duke,
deceased, for the Benefit of Angier B. Duke, Jr.,
Petitioner,**

v.

137

**COMMISSIONER OF INTERNAL REVENUE,
Respondent.**

Pursuant to the findings of fact and opinion of the Board, promulgated January 4, 1939, the respondent on January 25, 1939, filed notice and computation under Rule 50. Copy of said notice and computation having been served on the petitioner, together with notice of hearing, and the proceeding having been called for settlement from the Day Calendar of March 15, 1939, at which time no objection to the proposed computation was offered, it is

138

ORDERED AND DECIDED: That there is a deficiency in income tax for the year 1931 in the amount of \$2,199.01.

Enter:

**R. L. DISNEY,
Member.
(Seal)**

Petition for Review.

139

**IN THE UNITED STATES CIRCUIT COURT OF
APPEALS,**

FOR THE SECOND CIRCUIT.

Board of Tax Appeals, Docket No. 76031.

**CITY BANK FARMERS TRUST COMPANY, as Trustee of a trust
under the Last Will and Testament of Angier B. Duke,
deceased, for the Benefit of Anthony Newton Duke,**
Petitioner,

—against—

140

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

*To the Honorable Judges of the United States Circuit
Court of Appeals for the Second Circuit:*

The petition of City Bank Farmers Trust Company, as trustee of a trust under the last will and testament of Angier B. Duke, deceased, for the benefit of Anthony Newton Duke, respectfully shows:

141

I.

The said City Bank Farmers Trust Company is a corporation duly organized and engaged in the business of a trust company under the laws of the State of New York, has its principal office and place of business at No. 22 William Street, New York, N. Y., and was formerly known as The Farmers' Loan and Trust Company. The said Angier B. Duke died on September 3, 1923, a resident of the City, County and State of New York, leaving a last will and

Petition for Review.

142 testament in and by Subdivision (d) of Item IX of which he created the trust referred to herein for the benefit of the testator's son, Anthony Newton Duke, and whereby he appointed the said City Bank Farmers Trust Company as trustee. The said will was duly admitted to probate by the Surrogate's Court of New York County, New York, on September 18, 1923, and the said City Bank Farmers Trust Company duly qualified as trustee under said will on or about said date and since said date has been and is now the duly appointed, qualified and acting trustee under said last will and testament and of said trust.

143 The respondent is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, appointed and holding office by virtue of the laws of the United States.

The Federal income tax return of the petitioner for the calendar year 1931, the year in controversy, was duly filed by the petitioner with the United States Collector of Internal Revenue for the Second District of New York, Custom House, New York, N. Y., the collector in whose district is located the principal office and place of business of the petitioner. The court in which the review of this proceeding is sought is the Circuit Court of Appeals for the Second Circuit, the circuit in which is located the office of said collector.

144

II.

The nature of the controversy is as follows:

Pursuant to a decree of the Surrogate's Court of New York County, New York, entered on January 2, 1931, the petitioner, on January 20, 1931, paid to itself from the funds of said trust the sum of \$38,641.71, computed on the basis of principal in accordance with Section 285 of the Surrogate's Court Act of New York, to which it was entitled for its commissions as trustee of said trust.

Petition for Review.

The petitioner duly prepared and filed its Federal income tax return for the calendar year 1931, as required by the Federal Revenue Act of 1928, on which return no deduction was claimed on account of said commissions. Thereafter and on March 7, 1934, the respondent issued a notice of deficiency determining a deficiency of \$2,202.51 in the Federal income tax of the petitioner for the year 1931, which deficiency was based on a ground not material here. The petitioner on May 4, 1934, filed a petition with the United States Board of Tax Appeals, appealing from such determination, and claimed therein the right, pursuant to the provisions of Section 28(a) of the Revenue Act of 1928, to deduct as a business expense in computing its net income, the amount so paid from the funds of said trust for trustee's commissions. In said petition the petitioner claimed a refund of \$7,986.96 in its tax for said year, which refund was based on said deduction. 145

On motion duly made by the petitioner and granted by the Board on April 26, 1938, the proceeding so instituted by the filing of said petition was consolidated with a proceeding instituted by City Bank Farmers Trust Company, as trustee of a trust under the last will and testament of Angier B. Duke, deceased, for the benefit of Angier B. Duke, Jr., Board of Tax Appeals Docket No. 76046, involving a similar issue, and on said date said proceedings were submitted to the Board on the pleadings, a stipulation of facts, the testimony of a witness and certain documentary evidence. On January 4, 1939, the Board rendered its findings of fact and opinion in said proceedings, in which it was held that said deduction was not allowable on the ground that the petitioner was not carrying on any trade or business. Five members of the Board dissented from said holding. 146

The petitioner on February 3, 1939, filed with the Board a motion for a rehearing and reconsideration of said case, and said motion was denied by an order of the Board 147

Petition for Review.

148 entered on February 16, 1939. The Board on March 23, 1939, entered its decision in said case and determined that there is a deficiency of \$2,202.51 in the Federal income tax of the petitioner for the year 1931.

III.

The petitioner, as a basis for such a review, makes the following assignment of errors committed by the United States Board of Tax Appeals:

149 1. The Board erred in finding and holding that the petitioner during the year 1931 was not carrying on a trade or business within the meaning of Section 23(a) of the Revenue Act of 1928, and in failing and refusing to find and hold that it was carrying on such trade or business during said year.

150 2. The Board erred in holding that, in computing the petitioner's net income for the year 1931, the said sum of \$38,641.71, which was paid from the funds of said trust for trustee's commissions, is not deductible under Section 23(a) of the Revenue Act of 1928 as an ordinary and necessary expense paid or incurred during the taxable year in carrying on the trade or business of the petitioner, and in failing and refusing to hold that said amount is so deductible.

3. The Board erred in disallowing said deduction for trustee's commissions on the ground that the petitioner during the year 1931 was not carrying on a trade or business within the meaning of Section 23(a) of the Revenue Act of 1928, after counsel for the respondent at the hearing of said case had conceded on the record that the petitioner was carrying on such trade or business during said year.

Petition for Review.

4. The Board erred in denying the petitioner's motion for a rehearing and reconsideration of said case, and in failing and refusing to grant said motion. 151

5. The Board erred in determining that there is a deficiency of \$2,202.51 or any other amount in the Federal income tax of the petitioner for the year 1931, and in failing and refusing to hold that there is no deficiency in such tax.

6. The Board erred in failing and refusing to hold that there is an overpayment of \$7,986.96 in the Federal income tax of the petitioner for the year 1931.

152

WHEREFORE, the petitioner prays that the decision of the United States Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Second Circuit; that a transcript of the record be prepared in accordance with the law and rules of said court and transmitted to the Clerk of said court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said court.

ROLLIN BROWNE,
GEORGE CRAVEN,
Attorneys for Petitioner,
20 Exchange Place,
New York, N. Y.

153

MITCHELL, TAYLOR, CAPRON & MARSH,
20 Exchange Place,
New York, N. Y.,
Of Counsel.

Petition for Review.

154 State of New York,
County of New York—ss.:

GEORGE CRAVEN, being duly sworn, deposes and says that he is one of the attorneys and counsel of record for the petitioner in the above entitled case; that as such attorney and counsel he is duly authorized to verify the petition for review by the United States Circuit Court of Appeals for the Second Circuit of the decisions of the United States Board of Tax Appeals in the proceeding described in the foregoing petition; that he has read the said petition and knows the contents thereof, and that the facts set forth therein are true to the best of his knowledge, information and belief.

155

GEORGE CRAVEN.

Subscribed and sworn to before me this
21st day of June, 1939.

THOMAS I. FITZGERALD,
Notary Public.

N. Y. Co. Clk's No. 117; Reg. No. 1F349.

Kings Co. Clk's No. 45; Reg. No. 1218.

My Commission expires March 30, 1941.

156

(Seal)

Notice of Filing of Petition for Review.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, 157

FOR THE SECOND CIRCUIT.

Board of Tax Appeals, Docket No. 76031.

**CITY BANK FARMERS TRUST COMPANY, as Trustee of a Trust
Under the Last Will and Testament of Angier B. Duke,
Deceased, for the Benefit of Anthony Newton Duke,
Petitioner,**

—against—

**COMMISSIONER OF INTERNAL REVENUE,
Respondent.** 158

To the Commissioner of Internal Revenue:

YOU ARE HEREBY NOTIFIED that City Bank Farmers Trust Company, as trustee of a trust under the last will and testament of Angier B. Duke, deceased, for the benefit of Anthony Newton Duke, did on the 22nd day of June, 1939 file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Second Circuit of the decision of the Board of Tax Appeals heretofore entered in the above entitled case. A copy of the petition for review, together with the assignment of errors as filed, 159 is attached hereto and served upon you herewith.

Dated this 22nd day of June, 1939.

**ROLLIN BROWNE,
GEORGE CRAVEN,
Attorneys for Petitioner,
20 Exchange Place,
New York, N. Y.**

**MITCHELL, TAYLOR, CAPRON & MARSH,
20 Exchange Place,
New York, N. Y.,
Of Counsel.**

Petition for Review.

160 Personal service of the above and foregoing notice, together with a copy of the petition for review and assignment of errors mentioned therein, is hereby acknowledged this 22nd day of June, 1939.

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue,
Counsel for Respondent.

Petition for Review.

161 IN THE UNITED STATES CIRCUIT COURT OF
APPEALS,

FOR THE SECOND CIRCUIT.

Board of Tax Appeals, Docket No. 76046.

CITY BANK FARMERS TRUST COMPANY, as Trustee of a
Trust Under the Last Will and Testament of Angier
B. Duke, Deceased, for the Benefit of Angier B. Duke,
Jr.,

Petitioner,

—against—

162

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

*To the Honorable Judges of the United States Circuit
Court of Appeals for the Second Circuit:*

The petition of City Bank Farmers Trust Company, as trustee of a trust under the last will and testament of

Petition for Review.

Angier B. Duke, deceased, for the benefit of Angier B. Duke, Jr., respectfully shows: 163

I.

The said City Bank Farmers Trust Company is a corporation duly organized and engaged in the business of a trust company under the laws of the State of New York, has its principal office and place of business at No. 22 William Street, New York, N. Y., and was formerly known as The Farmers' Loan and Trust Company. The said Angier B. Duke died on September 3, 1923, a resident of the City, County and State of New York, leaving a last will and testament in and by Subdivision (c) of Item IX of which he created the trust referred to herein for the benefit of the testator's son, Angier B. Duke, Jr., and whereby he appointed the said City Bank Farmers Trust Company as trustee. The said will was duly admitted to probate by the Surrogate's Court of New York County, New York, on September 18, 1923, and the said City Bank Farmers Trust Company duly qualified as trustee under said will on or about said date and since said date has been and is now the duly appointed, qualified and acting trustee under said last will and testament and of said trust. 164

The respondent is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, appointed and holding office by virtue of the laws, of the United States. 165

The Federal income tax return of the petitioner for the calendar year 1931, the year in controversy, was duly filed by the petitioner with the United States Collector of Internal Revenue for the Second District of New York, Custom House, New York, N. Y., the collector in whose district is located the principal office and place of business of the petitioner. The court in which the review of this proceeding is sought is the Circuit Court of Appeals for the

Petition for Review.

166 Second Circuit, the circuit in which is located the office of said collector.

II.

The nature of the controversy is as follows:

Pursuant to a decree of the Surrogate's Court of New York County, New York, entered on January 2, 1931, the petitioner on January 20, 1931, paid to itself from the funds of said trust the sum of \$38,641.06 computed on the basis of principal in accordance with Section 285 of the Surrogate's Court Act of New York, to which it was entitled for its commissions as trustee of said trust.

167 The petitioner duly prepared and filed its Federal income tax return for the calendar year 1931, as required by the Federal Revenue Act of 1928, on which return no deduction was claimed on account of said commissions. Thereafter and on March 7, 1934, the respondent issued a notice of deficiency determining a deficiency of \$2,199.01 in the Federal income tax of the petitioner for the year 1931, which deficiency was based on a ground not material here. The petitioner on May 4, 1934, filed a petition with the United States Board of Tax Appeals, appealing from such determination, and claimed therein the right, pursuant to the provisions of Section 23 (a) of the Revenue Act of 1928, to deduct as a business expense in computing its net income, the amount so paid from the funds of said trust for trustee's commissions. In said petition the petitioner claimed a refund of \$7,994.56 in its tax for said year, which refund was based on said deduction.

168 On motion duly made by the petitioner and granted by the Board on April 26, 1938, the proceeding so instituted by the filing of said petition was consolidated with a proceeding instituted by City Bank Farmers Trust Company, as Trustee of a Trust under the Last Will and Testament of Angier B. Duke, deceased, for the benefit of Anthony

Petition for Review.

Newton Duke, Board of Tax Appeals Docket No. 76031, 169
involving a similar issue, and on said date said proceedings were submitted to the Board on the pleadings, a stipulation of facts, the testimony of a witness and certain documentary evidence. On January 4, 1939, the Board rendered its findings of fact and opinion in said proceedings, in which it was held that said deduction was not allowable on the ground that the petitioner was not carrying on any trade or business. Five members of the Board dissented from said holding.

The petitioner on February 3, 1939, filed with the Board a motion for a rehearing and reconsideration of said case, and said motion was denied by an order of the Board entered on February 16, 1939. The Board on March 23, 1939, 170
entered its decision in said case and determined that there is a deficiency of \$2,199.01 in the Federal income tax of said petitioner for the year 1931.

III.

The petitioner, as a basis for such a review, makes the following assignment of errors committed by the United States Board of Tax Appeals:

1. The Board erred in finding and holding that the petitioner during the year 1931 was not carrying on a trade or business within the meaning of Section 23(a) of the Revenue Act of 1928, and in failing and refusing to find and hold that it was carrying on such trade or business during said year. 171

2. The Board erred in holding that in computing the petitioner's net income for the year 1931 the said sum of \$38,641.06, which was paid from the funds of said trust for trustee's commissions, is not deductible under Section 23(a) of the Revenue Act of 1928 as an ordinary and necessary expense paid or incurred during the taxable year

Petition for Review.

172 in carrying on the trade or business of the petitioner, and
1 in failing and refusing to hold that said amount is so deductible.

3. The Board erred in disallowing said deduction for trustee's commissions on the ground that the petitioner during the year 1931 was not carrying on a trade or business within the meaning of Section 23(a) of the Revenue Act of 1928, after counsel for the respondent at the hearing of said case had conceded on the record that the petitioner was carrying on such trade or business during said year.

173 4. The Board erred in denying the petitioner's motion
for a rehearing and reconsideration of said case, and in failing and refusing to grant said motion.

5. The Board erred in determining that there is a deficiency of \$2,199.01 or any other amount in the Federal income tax of the petitioner for the year 1931, and in failing and refusing to hold that there is no deficiency in such tax.

6. The Board erred in failing and refusing to hold that there is an overpayment of \$7,994.56 in the Federal income tax of the petitioner for the year 1931.

174 WHEREFORE, the petitioner prays that the decision of
the United States Board of Tax Appeals be reviewed by the
United States Circuit Court of Appeals for the Second
Circuit; that a transcript of the record be prepared in accordance with the law and rules of said court and transmitted to the Clerk of said court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said court.

ROLLIN BROWNE,
GEORGE CRAVEN,
Attorneys for Petitioner,
20 Exchange Place,
New York, N. Y.

Petition for Review.

MITCHELL, TAYLOR, CAPRON & MARSH,
20 Exchange Place,
New York, N. Y.,
Of Counsel.

175

State of New York,
County of New York—ss.:

GEORGE CRAVEN, being duly sworn, deposes and says that he is one of the attorneys and counsel of record for the petitioner in the above entitled case; that as such attorney and counsel he is duly authorized to verify the petition for review by the United States Circuit Court of Appeals for the Second Circuit of the decisions of the United States Board of Tax Appeals in the proceeding described in the foregoing petition; that he has read the said petition and knows the contents thereof, and that the facts set forth therein are true to the best of his knowledge, information and belief.

176

GEORGE CRAVEN.

Subscribed and sworn to before me this
21st day of June, 1939.

177

THOMAS I. FITZGERALD,
Notary Public.

N. Y. Co. Clk's No. 117, Reg. No. 1F349.
Kings Co. Clk's No. 45; Reg. No. 1218.
My Commission expires March 30, 1941.

(Seal)

178

Notice of Filing of Petition for Review.**IN THE UNITED STATES CIRCUIT COURT OF
APPEALS,****FOR THE SECOND CIRCUIT.****Board of Tax Appeals, Docket No. 76046.**

179

**CITY BANK FARMERS TRUST COMPANY, as Trustee of a
Trust Under the Last Will and Testament of Angier
B. Duke, Deceased, for the Benefit of Angier B.
Duke, Jr.,**

Petitioner,**—against—****COMMISSIONER OF INTERNAL REVENUE,****Respondent.**

To the Commissioner of Internal Revenue:

180

YOU ARE HEREBY NOTIFIED that City Bank Farmers Trust Company, as trustee of a trust under the last will and testament of Angier B. Duke, deceased, for the benefit of Angier B. Duke, Jr., did on the 22nd day of June, 1939 file with the Clerk of the United States Board of Tax Appeals at Washington, D. C. a petition for review by the United States Circuit Court of Appeals for the Second Circuit of the decision of the Board of Tax Appeals heretofore entered in the above entitled case. A copy of the petition for re-

Notice of Filing of Petition for Review.

view, together with the assignment of errors as filed, is attached hereto and served upon you herewith. 181

Dated this 22nd day of June, 1939.

ROLLIN BROWNE,
GEORGE CRAVEN,
Attorneys for Petitioner,
20 Exchange Place,
New York, N. Y.

MITCHELL, TAYLOR, CAPRON & MARSH,
20 Exchange Place,
New York, N. Y.,
Of Counsel.

182

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignment of errors mentioned therein, is hereby acknowledged this 22nd day of June, 1939.

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue,
Counsel for Respondent.

183

184

Stipulation for Consolidation of Cases.

**IN THE UNITED STATES CIRCUIT COURT OF
APPEALS,**

FOR THE SECOND CIRCUIT.

B. T. A., Docket No. 76031.

**CITY BANK FARMERS TRUST COMPANY, as Trustee of a Trust
Under the Last Will and Testament of Angier B. Duke,
Deceased, for the Benefit of Anthony Newton Duke,
Petitioner,**

185

—against—

**COMMISSIONER OF INTERNAL REVENUE,
Respondent.**

B. T. A., Docket No. 76046.

**CITY BANK FARMERS TRUST COMPANY, as Trustee of a Trust
Under the Last Will and Testament of Angier B. Duke,
Deceased, for the Benefit of Angier B. Duke, Jr.,
Petitioner,**

—against—

186

**COMMISSIONER OF INTERNAL REVENUE,
Respondent.**

**IT IS STIPULATED AND AGREED between the parties to the
above-entitled cases, which were consolidated for hearing
and opinion by the United States Board of Tax Appeals
and in which petitions for review by the United States
Circuit Court of Appeals for the Second Circuit were filed
on June 22, 1939, that because the issue is the same in both
cases, said cases may be consolidated for preparation of the**

Stipulation for Consolidation of Cases.

record to be filed with the United States Circuit Court of Appeals for the Second Circuit and for hearing by said Court, and that one consolidated record of the proceedings in both cases in the United States Board of Tax Appeals may be filed with said Court. 187

Dated, August 14, 1939.

GEORGE CRAVEN,
Counsel for Petitioners.

J. P. WENCHEL,
Chief Counsel for Bureau of Internal Revenue,
Counsel for Respondent. 188

So ordered.

AUGUSTUS N. HAND,
United States Circuit Judge.

August 21, 1939.

Stipulation of Facts.

190

UNITED STATES BOARD OF TAX APPEALS.

Docket No. 76031.

CITY BANK FARMERS TRUST COMPANY, as Trustee of a Trust
Under the Last Will and Testament of Angier B.
Duke, Deceased, for the Benefit of Anthony Newton
Duke,

Petitioner,

—against—

191

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 76046.

CITY BANK FARMERS TRUST COMPANY, as Trustee of a Trust
Under the Last Will and Testament of Angier B.
Duke, Deceased, for the Benefit of Angier B. Duke, Jr.,

Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,

192

Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings, which have been consolidated for hearing by order of the Board of Tax Appeals, by their respective counsel, that the following facts may be taken as true and that the exhibits referred to herein may be admitted and received in evidence without the production of the originals, with the reservation that this stipulation shall be without prejudice to the right of

Stipulation of Facts.

either party to introduce further evidence not inconsistent 193
with the facts herein stipulated, viz.:

1. City Bank Farmers Trust Company is a corporation duly organized and operating under the laws of the State of New York, and at all times referred to herein was duly engaged in the business of a trust company under the provisions of the banking laws of the State of New York with its principal place of business at 22 William Street, New York, New York. The said City Bank Farmers Trust Company was formerly known as The Farmers' Loan and Trust Company.

2. Angier B. Duke died on September 3, 1923, a resident 194
of the City, County and State of New York, leaving a last will and testament in which he appointed City Bank Farmers Trust Company as trustee. The said last will and testament was duly admitted to probate by the Surrogate's Court of New York County, New York, to which jurisdiction in that behalf belonged, on September 18, 1923, and on or about said date the said City Bank Farmers Trust Company duly qualified as trustee under said will. The said City Bank Farmers Trust Company since said date has been and is now the duly appointed, qualified and acting trustee under the last will and testament of the said Angier B. Duke, deceased.

195

3. In and by subdivisions (c) and (d) of ITEM IX of said will the said testator, Angier B. Duke, created the two trusts hereinafter referred to, one for the benefit of the testator's son Angier B. Duke, Jr., and one for the benefit of the testator's son Anthony Newton Duke. A true copy of the last will and testament of Angier B. Duke is annexed hereto, marked "Exhibit A", and made a part hereof.

4. In a proceeding which was instituted by the petitioner for the settlement of its account as trustee under

Stipulation of Facts.

- 196 subdivisions (c) and (d) of ITEM IX of the last will and testament of Angier B. Duke, deceased, a decree was entered on January 2, 1931, by the Surrogate's Court of New York County, New York, to which jurisdiction in that behalf belonged, judicially settling the account of the petitioner as said trustee. It was provided in said decree that the petitioner retain and pay to itself out of the balance of principal remaining in its hands, as found by the court, the sum of \$38,641.71 as and for the commissions to which it was entitled under subdivision (d) of ITEM IX of said will for the benefit of Anthony Newton Duke, which said commissions were computed pursuant to the provisions of Section 285 of the Surrogate's Court Act of the State of New York on the basis of \$3,844,663.23 of principal received and \$12,806.75 of principal paid out by the petitioner as trustee of said trust. It was provided further in said decree that the petitioner retain and pay to itself out of the balance of principal remaining in its hands, as found by the court, the sum of \$38,641.06 as and for its commissions to which it was entitled under subdivision (c) of ITEM IX of said will for the benefit of Angier B. Duke, Jr., which said commissions were computed pursuant to the provisions of Section 285 of the Surrogate's Court Act of the State of New York on the basis of \$3,844,608.23 of principal received and \$12,798.62 of principal paid out by the petitioner as trustee of said trust. A true copy of said decree, together with Schedules F, G and H of the account in the case of each of said trusts, is annexed hereto, marked "Exhibit B", and made a part hereof.
- 197
- 198

5. Pursuant to the provisions of said decree the petitioner as trustee of said trusts, on January 20, 1931, paid to itself out of the principal funds of said trust for the benefit of Anthony Newton Duke the sum of \$38,641.71, as and for such commissions, and on said date paid to itself out of the principal funds of said trust for the benefit of

Stipulation of Facts.

Angier B. Duke, Jr., the sum of \$38,641.06, as and for such commissions. 199

6. The said Anthony Newton Duke and the said Angier B. Duke, Jr., the respective beneficiaries of the said two trusts under subdivision (d) and subdivision (c) of ITEM IX of said will, at all times referred to herein were living and were under the age of twenty-one, and the said trusts were in full force and effect during all such times.

7. The gross taxable income for the year 1931 of the said trust under subdivision (d) of ITEM IX of said will for the benefit of Anthony Newton Duke was as follows: 200

Fully taxable interest	\$ 523.83
Interest on tax-free covenant bonds	100.00
Loss on sale of securities	872.61
Domestic dividends	109,443.90
Foreign dividends	17,533.97
Total	<hr/> \$126,729.09

The said trust had deductions for said year, other than the deduction, if any, to which it may be entitled for the aforesaid trustee's commissions and other than the deduction to which it is entitled for income distributed to the minor beneficiary, of \$5,209.46. The petitioner as trustee of said trust, pursuant to the provisions of subdivision (d) of ITEM IX of said will, distributed \$6,281.98 out of such gross income in the year 1931 to the said Anthony Newton Duke, the minor beneficiary of said trust, leaving net undistributed income of \$115,237.65, arrived at by taking said deductions, to be distributed to said beneficiary when he should reach the age of twenty-one. The petitioner on its books of account, pursuant to said order and decree of the court, Exhibit B hereto, deducted the aforesaid trus-

Stipulation of Facts.

202 tee's commissions in the sum of \$38,641.71 from the principal of the trust; and if said sum is allowable as a deduction from taxable income in this proceeding, it is to be deducted from said net income of \$115,237.65, arrived at as aforesaid, in determining the taxable net income of said trust for the year 1931.

8. The gross taxable income for the year 1931 of the said trust under subdivision (c) of ITEM IX of said will for the benefit of Angier B. Duke, Jr., was as follows:

	Fully taxable interest	\$ 682.47
203	Interest on tax-free covenant bonds	100.00
	Loss on sale of securities	1,295.06
	Domestic dividends	109,438.90
	Foreign dividends	17,533.97
	Total	<hr/> \$126,460.28

204 The said trust had deductions for said year, other than the deduction, if any, to which it may be entitled for the aforesaid trustee's commissions and other than the deduction, to which it is entitled for income distributed to the minor beneficiary, of \$5,217.99. The petitioner as trustee of said trust, pursuant to the provisions of subdivision (c) of ITEM IX of said will, distributed \$6,267.49 out of such gross income in the year 1931 to the said Angier B. Duke, Jr., the minor beneficiary of said trust, leaving net undistributed income of \$114,974.80, arrived at by taking said deductions, to be distributed to said beneficiary when he should reach the age of twenty-one. The petitioner on its books of account, pursuant to said order and decree of the court, Exhibit B hereto, deducted the aforesaid trustee's commissions in the sum of \$38,641.06 from the principal of the trust; and if said sum is allowable as a deduction from taxable income in this proceeding, it is to

Stipulation of Facts.

be deducted from said net income of \$114,974.80, arrived at as aforesaid in determining the taxable net income of said trust for the year 1931. 205

9. The petitioner as trustee of said trust under subdivision (d) ITEM IX of said will for the benefit of Anthony Newton Duke, duly filed the Federal fiduciary and income tax returns of said trust for the year 1931 on Forms 1041 and 1040 with the Collector of Internal Revenue for the Second District of New York, Custom House, New York, New York, on March 14, 1932. The said return on Form 1040 showed undistributed income of \$119,046.95 taxable to the trustee, and showed a tax liability of \$12,876.28, and the amount of said tax liability of said trust was duly paid by the petitioner to the Collector of Internal Revenue for the Second District of New York, Custom House, New York, New York, as follows: 206

March 14, 1932	\$ 3,219.07
June 11, 1932	\$ 3,219.07
September 13, 1932	\$ 3,219.07
December 12, 1932	\$ 3,219.07
Total	\$12,876.28

10. The petitioner as trustee of said trust under subdivision (c) of ITEM IX of said will for the benefit of Angier B. Duke, Jr., duly filed the Federal fiduciary and income tax returns of said trust for the year 1931 on Forms 1041 and 1040, with the Collector of Internal Revenue for the Second District of New York, Custom House, New York, New York, on March 14, 1932. The said return on Form 1040 showed undistributed income of \$119,200.80 taxable to the trustee, and showed a tax liability of \$12,866.99, and the amount of said tax liability of said trust was duly paid by the petitioner to the Col- 207

Stipulation of Facts.

208 lector of Internal Revenue for the Second District of New
York, Custom House, New York, New York, as follows:

March	14, 1932	\$ 3,216.77
June	11, 1932	\$ 3,216.74
September	13, 1932	\$ 3,216.74
December	12, 1932	\$ 3,216.74
Total		<u>\$12,866.99</u>

209 11. Included in the said items of net income in the
total amount of \$119,046.95, referred to in paragraph 9
hereof, was the sum of \$16,670.71 received by the peti-
tioner as trustee of said trust for the benefit of Anthony
Newton Duke as dividends from British corporations. In
said return and in the petition filed in these proceedings,
it was contended by the petitioner that such dividends
amounted to \$21,764.42; that from such dividends British
income taxes were deducted and paid at the source in the
sum of \$5,093.71; and that the petitioner was entitled to
a credit of \$2,936.69 and a deduction of the balance of
\$2,157.02 on said return by reason of such taxes alleged
to have been paid to the Kingdom of Great Britain on
such dividends. It is agreed that the petitioner is not
entitled to such credit and deduction and that only the
sum of \$16,670.71, the amount actually received by the
210 petitioner on account of such British dividends, should be
included in the taxable income of the trust on its said
return.

12. Included in the said items of net income in the
total amount of \$119,200.80, referred to in paragraph 10
hereof, was the sum of \$16,673.74 received by the peti-
tioner as trustee of said trust for the benefit of Angier
B. Duke, Jr., as dividends from British corporations. In
said return and in the petition filed in these proceedings,
it was contended by the petitioner that such dividends
amounted to \$21,768.38; that from such dividends British

Stipulation of Facts.

income taxes were deducted and paid at the source in the sum of \$5,094.64; and that the petitioner was entitled to a credit of \$2,930.94 and a deduction of the balance of \$2,163.70 on said return by reason of such taxes alleged to have been paid to the Kingdom of Great Britain on such dividends. It is agreed that the petitioner is not entitled to such credit and deduction and that only the sum of \$16,673.74, the amount actually received by the petitioner on account of such British dividends should be included in the taxable income of the trust on its said return. 211

13. The petitioner did not claim on the said returns filed for the said trust for the benefit of Anthony Newton Duke, or either of them, a deduction for the aforesaid trustee's commissions paid in said year from the funds of said trust, or any part thereof. The petitioner did not claim on said returns filed for the said trust for the benefit of Angier B. Duke, Jr., or either of them, a deduction for the aforesaid trustee's commissions paid in said year from the funds of said trust, or any part thereof. 212

14. The principal of the said two trusts was received by the petitioner as trustee from the executors of the last will and testament of Angier B. Duke, deceased, on February 26, 1926.

15. The petitioner, as trustee of said trusts, at all times referred to herein, including the year 1931, kept its books of account and rendered its Federal income tax returns on the basis of cash receipts and disbursements. 213

Dated, April 26, 1938.

GEORGE H. CRAVEN,
Counsel for Petitioner.

(s) J. P. WENCHEL,
Chief Counsel for
Bureau of Internal Revenue,
Counsel for Respondent.

214 **EXHIBIT A, ANNEXED TO STIPULATION OF
FACTS.**

IN THE NAME OF GOD, AMEN.

I, **ANGIER B. DUKE**, of New York City, New York, being of sound mind and disposing memory, but recognizing the uncertainty of life, do make, publish and declare the following as and for and to be my last Will and Testament, hereby revoking all former Wills and Codicils made by me.

ITEM I. I direct that my body be laid in the family mausoleum in the cemetery at Durham, North Carolina.

215 **ITEM II.** I give and bequeath to Trinity College, of Durham, North Carolina, the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00) to be added to the Endowment Fund of said college.

ITEM III. I give and bequeath to The Fidelity Bank of Durham, North Carolina, as Trustee for Memorial Methodist Church at Durham, North Carolina, the sum of Ten Thousand Dollars (\$10,000.00), to be held and invested by said Trustee in its discretion as a principal fund, the net income from which shall be paid, as it accrues, to the Treasurer of the said Church, for use in defraying the expenses of said Church.

216

ITEM IV. I give and bequeath unto my beloved sister, **MARY DUKE BIDDLE**, such pearl necklaces and family silver service as may be given me by the will of my mother.

ITEM V. In the event that he acts as Executor of my Will and Estate, I give and bequeath unto my friend **E. BAYARD HALSTED**, the sum of Twenty Thousand Dollars (\$20,000.00); in the event that he acts as Executor of my Will and Estate, I give and bequeath unto my friend **GEORGE G. ALLEN**, the sum of Twenty Thousand Dollars

Exhibit A, Annexed to Stipulation of Facts.

(\$20,000.00); in the event that he acts as Executor of my Will and Estate, I give and bequeath unto my friend JOHN C. THORN, the sum of Twenty Thousand Dollars (\$20,000.00); in the event that he acts as Executor of my Will and Estate, I give and bequeath unto my friend WILLIAM R. PERKINS, the sum of Thirty Thousand Dollars (\$30,000.00). 217

ITEM VI. I give and bequeath to the Methodist Orphanage for white children at Raleigh, North Carolina, by whatever title it may be known, the sum of Ten Thousand Dollars (\$10,000.00), to be added to its Endowment Fund; and to the Methodist Orphanage for white children at Winston-Salem, North Carolina, by whatever title it may be known, the sum of Five Thousand Dollars (\$5,000.00), to be added to its Endowment Fund; to the Oxford Orphan Asylum for white children at Oxford, North Carolina, by whatever title it may be known, the sum of Five Thousand Dollars (\$5,000.00), to be added to its Endowment Fund; to the Orphan Asylum for colored children at Oxford, North Carolina, by whatever title it may be known, the sum of One Thousand Dollars (\$1,000.00), to be added to its Endowment Fund; and to the National Religious Training School at Durham, North Carolina, by whatever title it may be known, the sum of One Thousand Dollars (\$1,000.00), to be added to its Endowment Fund. 218

ITEM VII. I give and bequeath to my butler, ALFRED GARDNER, the sum of Five Hundred Dollars (\$500.00) provided he is in my employ at the time of my death. 219

ITEM VIII. I direct that my Executors, as soon as practicable and in all events within one year after my death, make, or cause to be made by persons selected by them for the purpose, a careful inventory and appraisal of all the property (which shall include all rights, powers and interests in, over and concerning property of every kind and wheresoever situated) which I may own at my

Exhibit A, Annexed to Stipulation of Facts.

220 death, setting forth every item in detail, as far as possible, and appraising each item therein at what is, in their judgment, its then cash value. They shall then add such valuations and thus ascertain the aggregate value of such items. Full and final power is hereby given my Executors to make such inventory and appraisal, and such inventory and appraisal shall take the place of any inventory and appraisal required by law to be made and filed. I hereby adopt such appraisal as the true and real value, singly and in the aggregate, of said property, and of each and every item thereof, and direct that it shall be binding and conclusive for all purposes and upon all persons. All

221 property of whatever kind and wherever situated which the will of my father or the will of my mother either gives me or gives the right to dispose of by my will shall be included in such inventory and appraisal, it being my intention that this and the succeeding provisions of this will shall be an exercise of any such power or disposition by will given me either by the will of my father or the will of my mother, and for this purpose in case either of said wills shall require the disposition of the property to and among my children, such property shall be included as a part of the shares which I hereinafter set apart for such children.

222 ITEM IX. The residue of the property so inventoried and appraised as aforesaid which may remain after satisfying and performing the other items of this will, paying my just debts and defraying the cost, charges and expenses of administering my estate, including therein all taxes legally assessed against the same, hereby denominated my residuary estate, I give, devise and bequeath, and direct my Executors to divide, allot and distribute as follows:

(a) One-Fourth in value of said residuary estate to my mother, SARAH P. DUKE, for her natural life, with remainder absolutely and in fee simple to my said sister,

Exhibit A, Annexed to Stipulation of Facts.

MARY DUKE BIDDLE, but in case my said sister shall die leaving no issue living at the time of her death, then in all respects in accordance with the then statutes of the State of New York governing the descent of real estate to and among those who by said statutes would have inherited any real property then owned by me in said State had I died intestate at the time of the death of my said sister. 223

(b) One-fourth in value of said residuary estate absolutely and in fee simple to my said sister, MARY DUKE BIDDLE; but in case she should die leaving no issue living at her death, then to my mother for her natural life if she be then alive, and at my mother's death or at the death of my sister leaving no issue then living if my mother be not then alive, in all respects in accordance with the then statutes of the State of New York governing the descent of real estate to and among those who by said statutes would have inherited any real property owned by me in said State at the time of such death of my sister or of my mother, as the case may be, had I died intestate at the time of the death of my said sister or of my mother, as the case may be. 224

(c) One-fourth in value of said residuary estate to The Farmers' Loan and Trust Company, in trust, however, for the uses and purposes following: Said Trustee shall collect and receive the income, revenues and profits thereof, and shall pay, apply and distribute the same to and for the support, education and maintenance of my son, ANGIER B. DUKE, JR., so long as he shall live, and after his death per capita in equal portions for the support, education and maintenance of his lineal descendants so long as this Trust may thereafter continue. Such payments, applications and distributions during the minority of my said son, ANGIER B. DUKE, JR., shall be in such amounts and at such times as in the uncontrolled discretion of said Trustee 225

Exhibit A, Annexed to Stipulation of Facts.

226 may be by it deemed necessary and advantageous for such purposes, it being my intention that the Trustee may, in its discretion, withhold from my said son, ANGIER B. DUKE, Jr., during his minority the whole or any part of such income, revenues and profits, and accumulate the same for his benefit. Upon my said son attaining his majority all said accumulations shall be at once paid to him. In case my said son dies before attaining his majority all such accumulations shall become a part of his estate and shall be paid, applied and distributed accordingly. Upon the death of both of my sons, ANGIER B. DUKE, Jr., and ANTHONY NEWTON DUKE, or upon the death of said ANGIER B. DUKE, Jr., and of all his lineal descendants (if such there shall be), whichever shall first occur, this Trust shall terminate, and all the property then held in said Trust, except such accumulations, shall be paid and distributed per capita to and among the lineal descendants of my said son, ANGIER B. DUKE, Jr., then living, and in case there be no such lineal descendants then living, then in all respects in accordance with the statutes of the State of New York governing the descent of real property to and among those who by said statutes would have inherited real property then owned by me in said State had I died intestate at the time of the termination of this Trust.

228 (d) One-fourth in value of said residuary estate to The Farmers' Loan and Trust Company, in trust, however, for the uses and purposes following: Said Trustee shall collect and receive the income, revenues and profits thereof, and shall pay, apply and distribute the same to and for the support, education and maintenance of my son, ANTHONY NEWTON DUKE, so long as he shall live, and after his death per capita in equal portions for the support, education and maintenance of his lineal descendants so long as this Trust may thereafter continue. Such payments, applications and distributions during the minor-

Exhibit A, Annexed to Stipulation of Facts.

ity of my said son, ANTHONY NEWTON DUKE, shall be in 229
 such amounts and at such times as in the uncontrolled
 discretion of said Trustee may be by it deemed necessary
 and advantageous for such purposes, it being my inten-
 tion that the Trustee may, in its discretion, withhold
 from my said son, ANTHONY NEWTON DUKE, during his
 minority the whole or any part of such income, revenues
 and profits, and accumulate the same for his benefit.
 Upon my said son attaining his majority all said accumula-
 tions shall be at once paid to him. In case my said son
 dies before attaining his majority all such accumulations
 shall become a part of his estate and shall be paid, applied
 and distributed accordingly. Upon the death of both of 230
 my sons, ANGER B. DUKE, Jr., and ANTHONY NEWTON
 DUKE, or upon the death of said ANTHONY NEWTON DUKE
 and of all his lineal descendants (if such there shall be),
 whichever shall first occur, this Trust shall terminate,
 and all the property then held in said Trust, except such
 accumulations, shall be paid and distributed per capita
 to and among the lineal descendants of my said son,
 ANTHONY NEWTON DUKE, then living, and in case there
 be no such lineal descendants then living, then in all
 respects in accordance with the statutes of the State
 of New York governing the descent of real property to
 and among those who by said statutes would have inherited
 real property then owned by me in said State had I died 231
 intestate at the time of the termination of this Trust.

(e) As respects each of the aforesaid Trusts, it is my
 will that:

The said Trustee shall have power to hold, manage and
 invest, and from time to time as need be, to re-invest the
 properties held in said Trust for the benefit and advantage
 of the beneficiaries thereof in such good and productive
 stocks, bonds or mortgages as will produce, if possible, a
 sure and regular income.

Exhibit A, Annexed to Stipulation of Facts.

232

The said Trustee and its successors shall have power to retain any investments made by me in my lifetime without liability for loss or shrinkage, or to change the property received by it under this will into other property as it deems best for the respective beneficiaries, and to that end it shall have power to sell, assign, transfer, exchange, deliver and convey any property at any time, and it shall invest the proceeds of all such sales and exchanges in any property it thinks best; but in all investments I charge it and its successors to be more careful as to the security of the funds than as to the acquisition of higher rates of interest, my desire being to have my property prudently and securely managed rather than hazarded in what may promise great gains.

233

Subject to the other provisions of this will, said Trustee shall pay, apply, divide and distribute such incomes, revenues and profits quarterly, semi-annually or annually, as may in its discretion be found best suited to the due administration of the Trusts.

234

Said Trustee shall have power to pay all taxes, levies and assessments which may be validly imposed upon the Trust Estate, or any part thereof or in respect thereof, or which may be incurred in the exercise of any of the powers conferred by this will, as well as all costs, charges and expenses of administering this Trust, which shall include adequate insurance, necessary repairs, and compensation to the Trustee for its service as such.

In the event that any stock dividend shall be declared upon any of the stock held under this instrument, the said stock received pursuant thereto shall for all purposes be treated and deemed to be principal even if the said stock dividend shall represent earnings. In the event that any rights shall accrue to or be declared in favor of any stock held hereunder, the said rights shall be sold by said Trustee and the proceeds thereof shall for all purposes be treated, considered and deemed as income, revenues and profits.

Exhibit A, Annexed to Stipulation of Facts.

No Trustee hereby appointed, and no Trustee appointed in pursuance of any powers herein contained, shall be required to give any bond or other security for the performance of his or its duty as such Trustee, nor shall any Trustee be required to reserve any part of the income of any investment or security for the purpose of creating a sinking fund to retire or absorb the premium in the case of bonds or other securities taken over, purchased or acquired by the Trustee at a premium. 235

The said Trustee may join in, assent to and make payments under any reorganization plan prepared and presented by or in behalf of committees of security holders, affecting or relating to securities held under the trust estate created herein, and is also hereby empowered to use or apply in its discretion any funds in the principal account, and, if necessary, is empowered to sell sufficient of the securities held hereunder for the purpose of making such payment. 236

It is my wish that said Trustee advise and consult with my Executors and my uncle, Mr. James B. Duke, upon and with reference to the sale, conveyance, exchange, transfer or delivery of any property received by it under this will, or of any investment or reinvestment of funds or money coming into its hands before making the same, to aid but not to control the said Trustee's discretion. 237

ITEM X. I hereby nominate and appoint my friend, E. BAYARD HALSTED, as my successor as Executor of the last Will and Testament of my father and of my mother.

ITEM XI. If any devisee, legatee, or beneficiary near or remote, immediate or contingent, under this will attempts to break this will or to set it aside in whole or in any part or to evade or disregard any part of it he, she or it, shall immediately upon the institution of any suit at law or in equity or of any special proceeding or legal opera-

Exhibit A, Annexed to Stipulation of Facts.

238 tion or litigation, *ipso facto*, lose, forego, surrender and forfeit any devises or bequests made to him, her or it under this will as if he, she or it had not been named or referred to in this will, and as fully as if he or she had never lived or it had never existed.

239 ITEM XII. I nominate, constitute and appoint my friends, E. BAYARD HALSTED, GEORGE G. ALLEN, JOHN C. THORN, and WILLIAM R. PERKINS, to be Executors of this will and of my estate, and direct that none of them be required to give or furnish any bond or security as such Executor, and that all costs and expenses incurred by them in and about performing the duties of Executors, including railroad and other travelling expenses, hotel bills while away from their respective homes on duties of my estate, be borne and paid out of my estate or refunded to them respectively, if they shall have paid any such costs and expenses. In case any bond or security be anywhere required of any of them the cost and charges of procuring and giving same shall be a part of the expense of administering my estate. None of my Executors shall receive any compensation for serving as Executors. A majority of my Executors may act, and their action shall be as binding as if all had acted. Each of my Executors is hereby empowered to name in his will his successor as Executor of this my will.

240 I hereby confer on my Executors full right and power to sell at public or private sale any and all property I may own at my death for such price, on such terms, for such consideration and at such time or times as they may deem to be to the best interest of my estate, to execute and deliver in due and legal form such transfers, conveyances and assignments thereof as may be necessary to vest in the purchasers such title thereto as I may have had at the time of my death and to give receipts, releases and acquittances for each and every payment made and lien taken or reserved. No purchaser shall be required to

Exhibit A, Annexed to Stipulation of Facts.

see to the application of the purchase money. Any legacy 241
 given or bequest made or trust created by this will may
 be satisfied by my Executors wholly or partly in money or
 property, and the judgment and decision of my Executors
 in this respect as well as with respect to the kind, quantity
 and value of the property to be utilized for such purpose
 or in and for the distribution, allotment or division that
 shall be made of my estate shall be final and conclusive
 on all interested parties, my Executors being hereby con-
 stituted the sole arbiters of any and all such questions and
 matters. All the powers conferred upon my Executors
 shall devolve upon and may be fully exercised by the sur-
 vivors or survivor thereof.

IN TESTIMONY WHEREOF, I have subscribed my name and
 affixed my seal unto this, my last Will and Testament, con-
 sisting with this page of nine pages, each page of which,
 except this page, I have identified by signing my name on
 the margin thereof, all on the 26th day of December, 1922.

ANGIER B. DUKE (L. S.)

The foregoing instrument, consisting with this page of
 nine pages, was on this 26th day of December, 1922, signed,
 sealed, published and declared by the above named testator,
 ANGIER B. DUKE, as and for and to be his last Will and
 Testament in the joint presence of us who at his request 243
 and in his presence and in the presence of each other have
 hereunto subscribed our names as witnesses this 26th day
 of December, 1922.

ALEXANDER H. SANDS, JR., residing at 145 Christopher St.,
 Montclair, N. J.

ROBERT A. NORRISS, residing at 440 Riverside
 Drive, New York City.

WILLIAM LEE BALDWIN, residing at 318 West 100th
 Street, New York City.

EXHIBIT B, ANNEXED TO STIPULATION OF FACTS.

244

At a Surrogate's Court held in and for the County of New York, at the Hall of Records, in the Borough of Manhattan, City, County and State of New York, on the 2nd day of January, 1931.

Present—HON. JOHN P. O'BRIEN, *Surrogate*.

In the Matter

of

245

The judicial settlement of the account of proceedings of CITY BANK FARMERS TRUST COMPANY, formerly known as The Farmers' Loan and Trust Company, as Trustee under Subdivisions "c" and "d" of ITEM IX of the Last Will and Testament of

ANGIER B. DUKE,

Deceased.

246

The City Bank Farmers Trust Company, formerly known as The Farmers' Loan and Trust Company, having heretofore made application to the Surrogate's Court of the County of New York for the judicial settlement of its account as trustee under subdivisions "c" and "d" of ITEM IX of the last will and testament of ANGIER B. DUKE, deceased, and for the construction of subdivision "e" of ITEM IX of said will, and a citation having been thereupon issued pursuant to statute directed to all of the persons interested in the trusts created under subdivisions "c" and "d" of ITEM IX of said will, citing them and each of them to show cause before the Surrogate of the County of New York, at the Hall of Records, in the Borough of Manhattan, City, County and State of New York, on the 19th day of September, 1930, at 10:30 o'clock in the forenoon

Exhibit B, Annexed to Stipulation of Facts.

of that day, why said account should not be judicially
 settled and allowed, and why subdivision "e" of ITEM IX
 of said will should not be construed as prayed for in the
 petition herein, and said citation having been returned
 with proof of due service thereof on the following respondents,
 to wit: Angier B. Duke, Jr., Anthony Newton Duke,
 Cordelia Biddle Robertson as General Guardian of the
 person and estate of Angier B. Duke, Jr. and Anthony
 Newton Duke, Mary Duke Biddle (Mrs. Anthony J. Drexel
 Biddle, Jr.), Mary Duke Biddle and Anthony J. Drexel
 Biddle III, and Sarah P. Duke having duly appeared in the
 above entitled proceeding by Forrest Hyde, Esq., her attorney,
 whose authority in writing to so appear duly executed
 and acknowledged has been filed herein, and said City
 Bank Farmers Trust Company having duly appeared upon
 the return day of said citation by Messrs. Taylor, Blanc,
 Capron & Marsh, its attorneys, and none of the other parties
 to this proceeding having appeared, and William H.
 Hickin, Esq., having been duly appointed Special Guardian
 for the infant respondents Angier B. Duke, Jr., Anthony
 Newton Duke, Mary Duke Biddle and Anthony J. Drexel
 Biddle III, and said City Bank Farmers Trust Company
 having duly rendered an account of its proceedings as
 trustee under subdivisions "c" and "d" of ITEM IX of said
 will from February 26, 1926, to and including December
 31, 1929, under oath before said Surrogate, and said account
 having been duly filed, and said William H. Hickin
 having duly filed his report as Special Guardian herein,
 wherein he finds that said account is in all respects correct
 and true so far as the interests of his wards are concerned,
 and the Court having been asked to construe subdivision
 "e" of ITEM IX of said will, and said will having been
 construed as hereinafter more fully set forth, and said
 matter having been duly adjourned to this day, the said
 Surrogate after having duly examined the said account,
 now here finds the state and condition of said account to

247

248

249

Exhibit B, Annexed to Stipulation of Facts.

250 be as set forth in the following summary statement thereof, made by the said Surrogate as judicially settled and allowed by him, to be recorded with and taken to be a part of the decree in this matter, to wit:

A summary statement of the account of proceedings of City Bank Farmers Trust Company, formerly known as The Farmers' Loan and Trust Company, as trustee under subdivisions "c" and "d" of ITEM IX of the last will and testament of Angier B. Duke, deceased, of the respective trusts therein created for the benefit of Angier B. Duke, Jr., and Anthony Newton Duke and remaindermen, made by the Surrogate as judicially settled and allowed:

251

SECTION I

RELATING TO TRUST CREATED FOR THE BENEFIT OF ANTHONY
NEWTON DUKE AND REMAINDERMEN

AS TO PRINCIPAL

Accountant is charged as follows:

With amount of all property
originally received and con-
stituting principal, as shown
in Schedule A

\$3,823,027.79

With amount of increase in
said trust, as shown in
Schedule B

252

21,635.44

\$3,844,663.23

Accountant is credited as follows:

With amount of all pay-
ments made for necessary ex-
penses chargeable against
principal, as shown in
Schedule C

12,806.75

Leaving a balance of
invested, as shown in
Schedule J

\$3,831,856.48

Exhibit B, Annexed to Stipulation of Facts.

AS TO INCOME

253

Accountant is charged as follows:

With amount of all income
received and earned by said
trust, as shown in Schedule
D

\$ 962,359.54

Accountant is credited as follows:

With amount of all pay-
ments made for necessary
expenses chargeable against
income, as shown in Sched-
ule F

\$ 29,608.74

254

With amount of all commis-
sions retained by account-
ant on account of income,
as shown in Schedule G

10,663.22

With amount of all pay-
ments made to or for the ac-
count of Anthony Newton
Duke, from income, as shown
in Schedule H

32,500.00

72,771.96

Leaving a balance of
invested as shown in
Schedule J

\$ 889,587.58

255

Exhibit B, Annexed to Stipulation of Facts.

256

SECTION II

RELATING TO TRUST CREATED FOR THE BENEFIT OF ANGIER
B. DUKE, JR., AND REMAINDERMEN

AS TO PRINCIPAL

Accountant is charged as follows:

With amount of all property
originally received and con-
stituting principal, as shown
in Schedule A

\$3,823,027.79

257

With amount of increase in
said trust, as shown in
Schedule B

21,580.44 \$3,844,608.23

Accountant is credited as follows:

With amount of all pay-
ments made for necessary
expenses chargeable against
principal, as shown in
Schedule C

12,798.62

Leaving a balance of
invested, as shown in
Schedule J

\$3,831,809.61

258

AS TO INCOME

Accountant is charged as follows:

With amount of all income
received and earned by said
trust, as shown in Schedule
D

963,277.83

Exhibit B, Annexed to Stipulation of Facts.

Accountant is credited as follows:

259

With amount of all payments made for necessary expenses chargeable against income, as shown in Schedule F

\$ 29,815.82

With amount of all commissions retained by accountant on account of income, as shown in Schedule G

10,674.60

With amount of all payments made to or for the account of Angier B. Duke, Jr., from income, as shown in Schedule H

32,500.00

260

72,990.42

Leaving a balance of invested, as shown in Schedule J

\$ 890,287.41

AND it appearing that said trustee has fully accounted for all of the moneys and property of the said trust estates which have come or should have come into its hands as trustee as aforesaid during the period covered by its said account, and said account having been duly adjusted by the said Surrogate, and a summary statement of the same having been made as above set forth and herewith recorded; it is

261

ORDERED, ADJUDGED AND DECREED that said account be and the same hereby is judicially settled and allowed in all respects as filed; and it is further

ORDERED, ADJUDGED AND DECREED that out of the balance of principal so found as above remaining in its hands as trustee under subdivision "d" of ITEM IX of said will of

Exhibit B, Annexed to Stipulation of Facts.

262 the trust therein created for the benefit of Anthony Newton Duke, accounted for in Section I of said account, said accountant retain and pay unto itself the sum of \$38,641.71 as and for the commissions to which it is entitled on this accounting for receiving the sum of \$3,844,663.23 of principal and for paying out the sum of \$12,806.75 of principal; and it is further

263 ORDERED, ADJUDGED AND DECREED that out of the balance of principal so found as above remaining in its hands as trustee under subdivision "c" of ITEM IX of said will of the trust therein created for the benefit of Angier B. Duke, Jr., accounted for in Section II of said account, said accountant retain and pay unto itself the sum of \$38,641.06, as and for the commissions to which it is entitled on this accounting for receiving \$3,844,608.23 of principal, and for paying out \$12,798.62 of principal; and it is further

264 ORDERED, ADJUDGED AND DECREED that out of the balances of principal so found as above remaining in its hands as trustee of said trusts, said accountant retain and pay unto itself the sum of \$6.05 as and for its costs and disbursements as taxed herein, and that it pay to William H. Hickin, Esq., the sum of \$6500.00, which amount is hereby awarded to him for his services as Special Guardian for the infant respondents in this proceeding, the aforementioned costs and allowance to be charged, one-half thereof to the principal of the trust created under subdivision "c" of ITEM IX of said will, and one-half thereof to the principal of the trust created under subdivision "d" of ITEM IX of said will.

AND it appearing that said testator in and by subdivision "e" of ITEM IX of his will, provided in part as follows:

"The said Trustee shall have power to hold, manage and invest, and from time to time as need be,

Exhibit B, Annexed to Stipulation of Facts.

to re-invest the properties held in said Trust for the benefit and advantage of the beneficiaries thereof in such good and productive stocks, bonds or mortgages as will produce, if possible, a sure and regular income. 265

The said Trustee and its successors shall have power to retain any investments made by me in my lifetime without liability for loss or shrinkage, or to change the property received by it under this will into other property as it deems best for the respective beneficiaries, and to that end it shall have power to sell, assign, transfer, exchange, deliver and convey any property at any time, and it shall invest the proceeds of all such sales and exchanges in any property it thinks best; but in all investments I charge it and its successors to be more careful as to the security of the funds than as to the acquisition of higher rates of interest, my desire being to have my property prudently and securely managed rather than hazarded in what may promise great gains." 266

AND the Court having been asked to construe subdivision "e" of ITEM IX of said will with respect to the investment powers of said trustee, now, after due deliberation

FINDS, ADJUDGES AND DETERMINES: 267

That it was the intention of the testator to and he did by the provisions of subdivision "e" of ITEM IX of said will,

(1) Authorize and empower accountant as trustee to retain as part of the principal of the trusts created under subdivisions "c" and "d" of ITEM IX of said will, any investments made by testator in his lifetime.

Exhibit B, Annexed to Stipulation of Facts.

268

J. P. O'B.

(2) Authorize and empower his trustee to invest and reinvest the principal and income of the trusts created under subdivisions "c" and "d" of ITEM IX of said will in securities other than those authorized by law for the investment of trust funds, but (3) in all investments the testator charges his trustee to be more careful as to the security of the funds than as to the acquisition of higher rates of interest, and expressed his desire to have his property prudently and securely managed, rather than hazard it in what may promise great gains. But notwithstanding the authority granted by said will as to investments, said trustee shall at all times exercise keen and alert judgment with respect to same.

269

AND it appearing that said testator in and by subdivision "d" of ITEM IX of his will gave, devised and bequeathed one-fourth of his residuary estate to City Bank Farmers Trust Company in trust to collect the income thereof and to pay, apply and distribute the same to and for the support, education and maintenance of his son Anthony Newton Duke, during his lifetime, with provision for the disposition of accumulated income and of the remainder of said trust as more fully in said clause provided;

270

AND it appearing that after making the payments and deductions hereinbefore directed to be made from the principal and income of the trust created for the benefit of Anthony Newton Duke, accounted for in Section I of said account, there will remain in the hands of said accountant as trustee of said trust a balance of principal of \$3,789,934.25, and a balance of income of \$889,587.58, invested as more fully set forth in Schedule J of Section I of said account; it is

ORDERED, ADJUDGED AND DECREED that said accountant continue to hold and administer the aforementioned bal-

Exhibit B, Annexed to Stipulation of Facts.

ances of principal and income in trust for the benefit of Anthony Newton Duke and remaindermen, upon the terms and conditions more fully set forth in subdivision "d" of ITEM IX of said will; 271

AND it appearing that said testator in and by subdivision "c" of ITEM IX of his will gave, devised and bequeathed one-fourth of his residuary estate to City Bank Farmers Trust Company in trust to collect the income thereof and to pay, apply and distribute the same to and for the support, education and maintenance of his son Angier B. Duke, Jr. during his lifetime, with provision for the disposition of accumulated income and of the remainder of said trust as more fully in said clause provided; 272

AND it appearing that after making the payments and deductions hereinbefore directed to be made from the principal and income of the trust created for the benefit of Angier B. Duke, Jr., accounted for in Section II of said account, there will remain in the hands of said accountant as trustee of said trust a balance of principal of \$3,789,888.02, and a balance of income of \$890,287.41, invested as more fully set forth in Schedule J of Section II of said account; it is

ORDERED, ADJUDGED AND DECREED that said accountant continue to hold and administer the aforementioned balances of principal and income in trust for the benefit of Angier B. Duke, Jr. and remaindermen, upon the terms and conditions more fully set forth in subdivision "c" of ITEM IX of said will; and it is further 273

ORDERED, ADJUDGED AND DECREED that said accountant upon complying with the provisions of this decree be and it hereby is discharged from all further liability, responsibility or accountability with respect to any matter or thing contained in the account herein, or in this decree, except

Exhibit B, Annexed to Stipulation of Facts.

- 274 that it shall remain accountable as trustee for the aforementioned balances of principal and income hereinbefore directed to be administered by it in accordance with the provisions of subdivisions "c" and "d" of ITEM IX of said will.

JOHN P. O'BRIEN

Surrogate

Filed Jan. 3rd, 1931.

ACCOUNT IN TRUST FOR ANTHONY NEWTON DUKE
SCHEDULE F

- 275 containing a statement of all payments made by accountant for necessary expenses chargeable against income.

1926

Nov. 30	Cost of Federal and State stamps for transfer of 250 rights, Marland Oil Company	\$ 1.00
---------	----------------------------------------------------------------------------------	---------

1927

Mar. 14	Paid Collector of Internal Revenue, 1st quarterly installment on 1926 Federal income tax on undistributed income	1,465.16
276 Apr. 13	Paid The State Tax Commissioner 1926 New York State income tax on undistributed income	1,655.18
26	Paid Notary Fee on 1926 Income Tax Returns	1.00
June 14	Paid Collector of Internal Revenue 2nd quarterly installment on 1926 Federal Income Tax on undistributed income	1,465.16
July 26	Paid Department of Finance and Taxation, additional 1926 New York State Income Tax on undistributed income	69.34

Exhibit B, Annexed to Stipulation of Facts.

Sept. 14	Paid Collector of Internal Revenue third quarterly installment on 1926 Federal income tax on undistributed income	1,465.16	277
Dec. 14	Paid Collector of Internal Revenue 4th installment on 1926 Federal income tax on undistributed income	1,465.16	
1928			
Mar. 14	Paid Collector of Internal Revenue 1st quarterly installment on 1927 Federal income tax on undistributed income	1,439.51	
Apr. 13	Paid Department of Taxation and Finance, 1927 New York State income tax on undistributed income	2,597.72	278
23	Paid Notary Fee on income tax returns for 1927	.75	
June 13	Paid Collector of Internal Revenue 2nd quarterly installment on 1927 Federal income tax	1,439.51	
Sept. 14	Paid Collector of Internal Revenue 3rd quarterly installment on 1927 Federal income tax	1,439.51	
Dec. 3	Paid Collector of Internal Revenue 4th quarterly installment on 1927 Federal income tax on undistributed income	1,439.50	279
1929			
Mar. 14	Paid Collector of Internal Revenue, 1st quarterly installment on 1928 Federal income tax on undistributed income	2,417.79	
Apr. 4	Paid Department of Taxation and Finance, 1928 New York State income tax on undistributed income	3,993.17	
17	Paid Notary Fees on 1928 income tax returns	.75	

Exhibit B, Annexed to Stipulation of Facts.

280	June 12	Paid Collector of Internal Revenue, second quarterly installment on 1928 Federal income tax on undistributed income	2,417.79
	Sept. 12	Paid Collector of Internal Revenue 3rd quarterly installment 1928 Federal income tax	2,417.79
	Dec. 13	Paid Collector, of Internal Revenue 4th quarterly installment 1928 Federal income tax	2,417.79
			<hr/>
			\$29,608.74

281

CITY BANK FARMERS TRUST
COMPANYBy J. G. KILBRETH
Trust OfficerACCOUNT IN TRUST FOR ANTHONY NEWTON DUKE
SCHEDULE Gcontaining a statement of all commissions retained by
accountant on account of income.

	1927			
282	Feb. 4	Paid The Farmers' Loan and Trust Company, commissions on account of income		\$ 2,200.85
	1928			
	Mar. 6	do do		2,468.24
	1929			
	Mar. 13	do do		4,262.97
	Dec. 31	Paid City Bank Farmers Trust Company, commissions on account of income		1,731.16
				<hr/>
				\$10,663.22

Exhibit B, Annexed to Stipulation of Facts.

Computation:

283

	RECEIVING	PAYING	
1927			
Mar. 1	\$359,811.57	\$ 8,743.42	\$ 3,742.42
1928			
Mar. 1	122,058.40	19,080.24	1,494.08
1929			
Mar. 1	228,701.80	20,940.28	2,583.78
Dec. 31	251,787.77	24,008.02	2,842.94
	<u>\$962,359.54</u>	<u>\$72,771.96</u>	<u>\$10,663.22</u>

284

CITY BANK FARMERS TRUST
COMPANYBy J. G. KILBRETH
Trust OfficerACCOUNT IN TRUST OF ANTHONY NEWTON DUKE
SCHEDULE Hcontaining a statement of all payments made to or for the
account of Anthony Newton Duke, from income.

285

1926

Nov. 22 Paid Cordelia Biddle Robertson, Gen-
eral Guardian for Anthony Newton
Duke \$ 2,500.00

1927

Feb. 8	do	do	2,500.00
Apr. 30	do	do	2,500.00
July 30	do	do	2,500.00
Oct. 31	do	do	2,500.00

Exhibit B, Annexed to Stipulation of Facts.

286	1928			
	Jan. 31	do	do	2,500.00
	Apr. 30	do	do	2,500.00
	July 31	do	do	2,500.00
	Oct. 31	do	do	2,500.00
	1929			
	Jan. 31	do	do	2,500.00
	Apr. 30	do	do	2,500.00
	July 31	do	do	2,500.00
	Oct. 31	do	do	2,500.00
				<hr/>
				\$32,500.00

287

CITY BANK FARMERS TRUST
COMPANYBy J. G. KILBRETH
Trust OfficerACCOUNT IN TRUST FOR ANGIER B. DUKE, JR.
SCHEDULE Fcontaining a statement of all payments made by accountant
for necessary expenses chargeable against income.

288	1926			
	Nov. 30	Cost of Federal Stamps on the transfer of 250 rights, Morland Oil Company	\$	1.00
	1927			
	Mar. 14	Paid Collector of Internal Revenue, 1st quarterly installment on 1926 Federal income tax on undistributed income		1,486.30
	Apr. 13	Paid The State Tax Commission, 1926 New York State income tax on undistributed income		1,668.89

Exhibit B, Annexed to Stipulation of Facts.

Apr. 26	Paid Notary Fee on income tax return for 1926	1.00	289
June 14	Paid Collector of Internal Revenue, 2nd quarterly installment on 1926 Federal income tax on undistributed income	1,486.30	
July 26	Paid Department of Taxation and Finance, additional 1926 New York State income tax on undistributed income	69.37	
Sept. 14	Paid Collector of Internal Revenue, 3rd quarterly installment on 1926 Federal income tax on undistributed income	1,486.30	290
Dec. 14	Paid Collector of Internal Revenue, 4th installment of 1926 Federal income tax on undistributed income	1,486.29	
1928			
Mar. 14	Paid Collector of Internal Revenue, 1st quarterly installment on 1927 Federal income tax on undistributed income	1,439.05	
21	Paid Collector of Internal Revenue, additional Federal income tax on undistributed income	\$1.00	
	Interest	.03	1.03 291
Apr. 13	Paid Department of Taxation and Finance, 1927 New York State income tax on undistributed income	2,605.99	
23	Paid Notary Fees on 1927 income tax returns	.75	
June 13	Paid Collector of Internal Revenue, 2nd quarterly installment on 1927 Federal income tax on undistributed income	1,439.05	

Exhibit B, Annexed to Stipulation of Facts.

292	Sept. 14	Paid Collector of Internal Revenue, 3rd quarterly installment on 1927 Federal income tax on undistributed income	1,439.05
	Dec. 13	Paid Collector of Internal Revenue, 4th quarterly installment on 1927 Federal income tax on undistributed income	1,439.05
1929			
293	Mar. 13	Paid Collector of Internal Revenue, 1st quarterly installment on 1928 Federal income tax on undistributed income	2,444.82
	Apr. 12	Paid Department of Taxation and Finance, 1928 New York State income tax on undistributed income	3,986.38
	17	Paid Notary Fee on 1928 income tax returns	.75
	June 12	Paid Collector of Internal Revenue, 2nd quarterly installment on 1928 Federal income tax on undistributed income	2,444.82
	Sept. 12	Paid Collector of Internal Revenue, 3rd quarterly installment on 1928 Federal income tax on undistributed income	2,444.82
294	Dec. 13	Paid Collector of Internal Revenue, 4th quarterly installment on 1928 Federal income tax on undistributed income	2,444.81
			<hr/> \$29,815.82

CITY BANK FARMERS TRUST
COMPANY

By J. G. KILBRETH
Trust Officer

*Exhibit B, Annexed to Stipulation of Facts.*ACCOUNT IN TRUST FOR ANGIER B. DUKE, JR.
SCHEDULE G

295

containing a statement of all commissions retained by
accountant on account of income.

1927				
Mar. 11	Paid The Farmers' Loan and Trust Company on account of commission—		\$ 2,198.69	
1928				
Mar. 6	do do		2,480.51	
1929				
Mar. 13	do do		4,268.96	
Dec. 31	Paid City Bank Farmers Trust Com- pany on account of commission		1,726.44	296
			<u>\$10,674.60</u>	

Computation:

	RECEIVING	PAYING	
1927			
Mar. 1	\$360,270.23	\$ 8,748.05	\$ 3,747.05
1928			
Mar. 1	122,115.39	19,180.35	1,495.90
1929			
Mar. 1	229,175.17	20,952.63	2,588.66
Dec. 31	251,717.04	24,102.39	2,842.99
	<u>\$963,277.83</u>	<u>\$72,990.42</u>	<u>\$10,674.60</u>

297

CITY BANK FARMERS TRUST
COMPANYBy J. G. KILBRETH
Trust Officer

Exhibit B, Annexed to Stipulation of Facts.

298

**ACCOUNT IN TRUST FOR ANGIER B. DUKE, JR.
SCHEDULE H**

containing a statement of all payments made to or for the
account of Angier B. Duke, Jr., from income.

1926

Nov. 22	Paid Cordelia Biddle Robertson, Gen- eral Guardian of Angier B. Duke, Jr., on account of income	\$ 2,500.00
---------	-------------------------------------------------------------------------------------------------------	-------------

1927

Jan. 31	do	do	2,500.00
299 Apr. 30	do	do	2,500.00
July 30	do	do	2,500.00
Oct. 31	do	do	2,500.00

1928

Jan. 31	do	do	2,500.00
Apr. 30	do	do	2,500.00
July 31	do	do	2,500.00
Oct. 31	do	do	2,500.00

1929

Jan. 31	do	do	2,500.00
Apr. 30	do	do	2,500.00
July 31	do	do	2,500.00
Oct. 31	do	do	2,500.00

300

\$32,500.00

**CITY BANK FARMERS TRUST
COMPANY**

By J. G. KILBRETH
Trust Officer

Statement of the Evidence.

301

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

B. T. A. Docket No. 76031.

CITY BANK FARMERS TRUST COMPANY, as Trustee of a
Trust Under the Last Will and Testament of Angier
B. Duke, Deceased, for the Benefit of Anthony Newton
Duke,

Petitioner,

—against—

302

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

B. T. A. Docket No. 76046.

CITY BANK FARMERS TRUST COMPANY, as Trustee of a
Trust Under the Last Will and Testament of Angier
B. Duke, Deceased, for the Benefit of Angier B.
Duke, Jr.,

Petitioner,

—against—

303

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

IT IS STIPULATED AND AGREED between the parties in the
above-entitled cases, by their respective counsel of record,
that the following statement of the evidence in narrative
form, together with the exhibits annexed thereto and the
stipulation of facts filed separately herein, contains, in

Statement of the Evidence.

304 substance, all the evidence heard and received by the United States Board of Tax Appeals at the hearing of said cases held in New York, N. Y., on April 26, 1938, and all statements made by counsel for the respective parties, which are material to the questions presented and involved in the several assignments of error appended to and constituting a part of the petitions for review heretofore filed in these cases:

305 At the hearing of the cases counsel for the petitioners stated that the deficiencies had been determined by the Commissioner of Internal Revenue on the basis of an issue which had been conceded by the petitioners, and that in the petitions which had been filed with the Board of Tax Appeals the petitioners had claimed refunds based on their claim that each of the petitioners was entitled to deduct in its Federal income tax return for the year 1931 trustee's commissions of approximately \$38,000.00. Counsel stated that those commissions were computed on the basis of principal of the respective trusts, pursuant to the provisions of Section 285 of the Surrogate's Court Act of the State of New York, which sets forth the rates of commissions to which a trustee is entitled for its services in such cases; and that while the commissions in question were computed on the basis of principal and were paid out of principal, each trust in the year in question had accumulated income of approximately \$150,000.00, which was more than ample to cover the commissions. Counsel stated that the petitioners contended that the commissions were properly deductible as business expenses; that the Board of Tax Appeals had held in a number of cases that a trustee engaged in managing a trust estate which has its funds invested in income-producing property is engaged in trade or business, and that commissions paid to the trustee for such services are business expenses. Counsel stated that the Board had held in the case of *Watson v. Commissioner* (35 B. T. A. 706), that it makes no difference whether such commissions

306

Statement of the Evidence.

are computed on the basis of taxable income or on the basis of nontaxable income, that they are business expenses for the services of the trustee and are deductible from taxable income; also, that there is an early Bureau ruling, S. M. 2463 (III-2 C. B. 91), which holds that commissions computed on the basis of principal are allowable as income tax deductions, and that the ruling had been in force so long and there had been so many reenactments of the applicable provisions of the revenue acts while the ruling had been in force, that the ruling had received Congressional sanction. Counsel stated also that S. M. 2463 was then still in full force and effect, and that he knew of no reason for the disallowance of the commissions. 307

Counsel for the respondent stated that the reason for the respondent's disallowance of the commissions and for the trial of the cases was that the facts in the case on trial did not come within the facts stated in S. M. 2463; that the two large, unusual items of commissions, amounting to more than \$38,000.00 each, were commissions which under the decree of the court attached to the stipulation of facts were allowed to the trustees for receiving the corpus of the trust estates, amounting to more than \$3,000,000.00 in each case; and that the trustees, which qualified as such at the time of the probate of the testator's will in 1923, actually received the corpus of the trust estates in 1926. Counsel stated that ordinary commissions with respect to the current transactions within the taxable year for receiving and paying out income, and all other expenses incurred in connection with the production of income in the taxable year had been allowed by the respondent as deductions as business expenses. Counsel stated that on the title page of each Internal Revenue Bulletin, in one of which S. M. 2463 appears, it is provided that "each ruling embodies the administrative application of the law and the Treasury decisions to the entire state of facts upon which a particular case rests. It is especially to be noted that the same result will not 308 309

Statement of the Evidence.

310 necessarily be reached in another case unless all the material facts are identical with those in the reported case". Counsel recited certain of the facts stated in S. M. 2463 in reference to the trust there under consideration, and stated that those were not the facts in the present cases; that the commissions in issue were not paid out of the income of the trusts and, under the decree of the court, they could not be so paid; that they were charged against principal, and that any income remaining before taking these commissions into consideration was to be accumulated and distributed to the beneficiaries when they reached the age of twenty-one years, undiminished by such commissions. Counsel stated that the fact that the commissions were charge-
311 able entirely against corpus distinguished the facts in the present cases from those which were under consideration in S. M. 2463; and that such facts also distinguished the present case from the case of Watson v. Commissioner, where the commissions were paid out of income.

CROSBY T. SMITH, a witness called by and on behalf of the petitioners, having been duly sworn, testified as follows:

Direct examination:

312 I am an Assistant Trust Officer of City Bank Farmers Trust Company, and have been connected with that company for over 13½ years. During that period of years I have been familiar with matters pertaining to the administration of estates and trusts of which City Bank Farmers Trust Company is executor and trustee, and I am familiar in a general way with the duties and activities of a trustee of a testamentary trust. I have charge of the administration of the two trusts under the last will and testament of Angier B. Duke, deceased, one for the benefit of Anthony Newton Duke and the other for the benefit of Angier B.

Statement of the Evidence.

Duke, Jr., which are referred to in the stipulation of facts herein; I have been in charge of the trusts for approximately the last six months; prior to that time I was not in charge of them; I have charge and control of the records pertaining to the administration of those trusts since their beginning. 313

At this point the following question was asked by counsel for the petitioners, the following answers given by the witness, and the following statements were made by Mr. Craven, counsel for the petitioners, by Mr. Johnston, counsel for the respondent, and by the Board Member.

Q. Mr. Smith, it is stipulated in this case that in the year 1931, City Bank Farmers Trust Company received commissions of \$38,641.71 pursuant to Section 285 of the Surrogate's Court Act of New York, from the trust for Anthony Newton Duke, and that in the same year it received similar commissions in the sum of \$38,641.06 from the trust for Angier B. Duke, Jr. I wish to call your attention further to the fact that under the provisions of Section 285 of the Surrogate's Court Act, it is provided that such commissions are payable to a testamentary trustee for his services in such an official capacity. 314

Will you state whether or not you are familiar with the nature of the duties and activities of City Bank Farmers Trust Company as trustee of these two trusts for which it received those commissions? 315

Mr. Johnston: If Your Honor please, I object to the question on the ground that the very decree which we have stipulated states the reason for it. This is in the case of City Bank Farmers Trust Company, Angier B. Duke.

The Member: May I suggest this, Mr. Johnston? That the witness is simply asked whether he was familiar with those duties and he has already answered that he is, and it occurs to me that perhaps

Statement of the Evidence.

316

your objection will come a little later as a matter of course.

Mr. Johnston: I just wanted to call your attention to the fact that under this decree these commissions are not paid for services, that is, during this taxable year, at all. They are paid expressly for receiving the principal of the trust.

The Member: Yes, I understand that.

317

Mr. Craven: If Your Honor please, if I may take just a few minutes, I think I can clear up a great deal of doubt and misunderstanding on that point. Of course, I don't think it needs any argument on my part that a trustee doesn't get \$38,000 of commission just for reaching out his hand and receiving principal. It is quite clear under the New York law that he gets those commissions—

318

The Member: I don't see any necessity for arguing the matter now. I think I see the point that there is between you gentlemen, at least I hope I do, and all I need, I believe, is this evidence, and then upon the briefs I can decide it. I believe I see the point. I don't think it is necessary to argue it now unless you think there is something indefinite here, or that I ought to know that would justify arguing it at this time; otherwise proceed, but there doesn't seem to me there is any reason for argument.

Mr. Craven: I have New York cases to support my position.

The Member: We don't plan to argue about those cases at this time. It is my suggestion that you brief them. If you think there is something you should advise me of in order that I might follow the testimony, I certainly would be unjustified in refusing to hear argument. However, I think I see your point.

Mr. Craven: Well, I think the contention of counsel for the respondent is that the commissions were

Statement of the Evidence.

paid solely for the act of the trustee in receiving principal. It is well settled under the New York law that that is merely a basis for measuring compensation, and I simply want to prove by this witness the duties and activities which the trustee performs for those commissions. 319

The Member: Go ahead and offer your testimony and we will rule upon it as objections arise.

• By Mr. Craven:

Q. Did you state that you were familiar with those duties and activities? A. I am.

Q. Will you state in a general way just what the nature of those duties and activities have been since the trust has been under your supervision, and from your general knowledge of what was done prior thereto? 320

The testimony of the witness was continued as follows:

Customarily, at the time the trustee starts to act as trustee of any trust, the securities and other assets of the trust are examined with great care and investigated by a committee of the investment department, and are often submitted to a senior committee. After the trust is established the securities of the trust receive constant review; generally at least two to four times a year they are gone over by a junior or senior committee, in addition to receiving weekly or monthly reviews by the investment clerks in charge, and also the senior officers in charge of the particular trust. In addition to the investment reviews, very often the decision is arrived at that certain securities should be liquidated and others purchased. The income from the securities is collected; in the case of bonds, the coupons are cut; in the case of stocks, dividends are collected, and the income is credited to the account. Books are kept; statements are rendered to the 321

Statement of the Evidence.

322 interested parties at regular intervals; income tax returns are prepared and filed; and detailed reports are kept of all the assets of the accounts.

During the year 1931 and prior and subsequent thereto, the funds of these trusts were invested in income-producing stocks and bonds. The investment department and investment committee of City Bank Farmers Trust Company were active during all those periods in supervising the investments in which the funds were invested; the funds were reviewed several times during 1931. I have stated what the general practice of a trustee of a testamentary trust is; these trusts have been administered at all times in accordance with that general practice.

323 The ledger sheet which has been exhibited to me, entitled "Principal Anthony Newton Duke", is our bookkeeping sheet of the account as to principal in the trust to which we have referred, for the benefit of Anthony Newton Duke, covering the year 1931; it shows receipts and disbursements of funds pertaining to the principal of this trust. The seven ledger sheets which have been exhibited to me, entitled "Income Anthony Newton Duke", are our ledger sheets covering receipts and disbursements of income in this trust for Anthony Newton Duke for the year 1931.

324 At this point the paper first identified by the witness was offered and received in evidence and marked "Petitioners' Exhibit 1", and the seven ledger sheets next identified by the witness were offered and received in evidence and marked "Petitioners' Exhibit 2". Said exhibits are attached hereto and made a part hereof.

The testimony of the witness was continued as follows:

The ledger sheet which has been exhibited to me, entitled "Principal Angier B. Duke", is our ledger sheet showing the record of receipts and disbursements for the year 1931 in the principal account of the trust for the benefit of Angier B. Duke, Jr. The seven ledger sheets which have been exhibited to me, entitled "Income Angier B. Duke",

Statement of the Evidence.

are our ledger sheets showing the receipts and disbursements of income for the year 1931 in the trust for the benefit of Angier B. Duke, Jr. 325

At this point the ledger sheet first identified by the witness was offered and received in evidence and marked "Petitioners' Exhibit 3", and the seven ledger sheets next identified by the witness were offered and received in evidence and marked "Petitioners' Exhibit 4". Said exhibits are attached hereto and made a part hereof.

The testimony of the witness was continued as follows:

The two sheets which have been exhibited to me, entitled "Trust for Anthony Newton Duke", which purport to contain certain diary entries or a running record of events, show the current diary of investment reviews and other action taken in connection with investments in the trust for Anthony Newton Duke; they cover such activities for the year 1931. The two similar sheets which have been exhibited to me, entitled "Trust for Angier B. Duke, Jr.", show the current diary of action taken in connection with investments for the Angier B. Duke, Jr., trust for the year 1931. 326

At this point the two sheets first identified by the witness were offered and received in evidence and marked "Petitioners' Exhibit 5", and the two sheets next identified by the witness were offered and received in evidence and marked "Petitioners' Exhibit 6". Said exhibits are attached hereto and made a part hereof. 327

The testimony of the witness was continued as follows:

I testified that the sheets which have just been identified and offered in evidence cover the activities of the trustee of these trusts for the year 1931; the activities of the trustee of the trusts have been of a similar nature in all other years since City Bank Farmers Trust Company has been acting as such trustee. It is the practice of City Bank Farmers Trust Company as trustee of these trusts to do everything in connection with the administra-

Statement of the Evidence.

328 tion of such trusts which it deems necessary and proper to conserve principal and provide income. That practice has been followed in the administration of these trusts. Cross examination:

I have been connected with the Trust Department of City Bank Farmers Trust Company since 1924. I understand that Angier B. Duke died September 3, 1923; that his will was admitted to probate on September 18, 1923, and on or about that date City Bank Farmers Trust Company qualified as trustee under the will. I understand that the principal of the two trusts at issue was received by the trustee from the executors of the last will and testament of Angier B. Duke on February 26, 1926. I do not know why the trustee waited until the year 1931 to petition to the court to allow the commissions which counsel for the respondent states were for receiving the principal of the trusts. As far as I know the commissions could have been allowed to the trustee at the time the corpus was received on or about February 26, 1926. There was no question as to the ability of the trusts to pay the trustees' commissions when they first became payable under the law.

330 City Bank Farmers Trust Company has a large Trust Department; I would say that in the year 1931 it had under its supervision roughly about three or four hundred trust accounts somewhat comparable with the ones now under consideration. The trust committee looked after and supervised these three or four hundred trusts generally in a manner comparable to that in which they looked after the Angier B. Duke trust and the Anthony N. Duke trust. If City Bank Farmers Trust Company, in performing the activities shown by Petitioners' Exhibits 5 and 6 with respect to the two trusts under consideration here, was engaged in a trade or business, it was also engaged in a trade or business with respect to some three or four hundred other different trusts.

Statement of the Evidence.

The balance to which counsel for the respondent has referred in the principal account of \$13,147.37 as of December 31, 1930, is an overdraft balance. That does not purport to show the total balance of principal which the trust held at that time; it is merely the principal cash account, not the security account. The exhibit shows the cash receipts and disbursements for the period covered by it. Exhibit 1 shows an item of \$38,641.71 as commissions charged against the principal account and shows that the trustee was receiving \$3,444,663.23 and paying out \$12,806.75 on account of principal, pursuant to the decree of the court of January 2, 1931.

331

I understand that paragraph 7 of the stipulation of facts shows that the petitioner as trustee, pursuant to the provisions of subdivision (d) of Item IX of the will, distributed \$6,281.98 out of the gross income in the year 1931 to Anthony N. Duke, the beneficiary of the trust, leaving net undistributed income of \$115,237.65. Under the terms of the will of Angier B. Duke and the plan which City Bank Farmers Trust Company pursued in handling the trust, that \$115,237.65 was accumulated and would be distributed to the beneficiary when he reached twenty-one years of age. The trustee received each year commissions computed on income, and deductions for those commissions were taken and allowed on the return. This item of \$38,641.71 has been paid only once to date.

332

333

Re-direct examination:

As to the difference between the method of a trustee in taking commissions computed on the basis of income, and the method of taking commissions computed on the basis of principal, income commissions are ordinarily computed by the Trust Company on an annual basis, the rates being the same as those on principal, as I understand the statutes of New York State, while principal commissions are taken, as I understand it, one-half at the time of receiving, or

Statement of the Evidence.

334 allowable as of the date of receipt of principal, and one-half as of the date of termination of the trust. The principal commissions, as I understand it, can be taken only under a court order, while income commissions can be taken each year. It is not the practice of City Bank Farmers Trust Company to pay its commissions computed on the basis of principal before those commissions have been allowed by the proper court; I know of no case where we have done that. We apply for those commissions at the time we file our accounting as trustee. It is ordinarily the practice of City Bank Farmers Trust Company and trust companies in general, and other trustees, to wait until there is some reason for accounting before doing so, and, at the time of such accounting, to make application for commissions. In connection with the accounting on which the Surrogate's Court rendered the decree on January 2, 1931 (Exhibit B, attached to the stipulation), City Bank Farmers Trust Company applied for a construction of the will of Angier B. Duke; to the best of my knowledge that was the only reason for filing the accounting at the time it was filed.

Re-cross examination:

336 I know the reason for filing the accounting at that time only from the record; I have no personal knowledge of it. The records indicate that there was a desire to obtain a construction of an investment clause of the will. It is true that the Trust Company has been administering this trust since 1926; I don't know in this particular case the reason for obtaining the construction of the provisions of the will in 1931 rather than in 1926, but very often we may hold a security, and five or six years later the company in which the security is held may go into reorganization or something of that kind, which may change the entire nature of the security; we might have to obtain a construction at that time to determine what we could do with the security. I

Statement of the Evidence.

cannot say of my own knowledge whether we had any such situation in these trusts. 337

At the time the corpus was received the principal consisted of bonds and stocks; there were holdings of the Duke Power Company in each trust; they were the chief holdings, and they were still held up until 1931, without material change, unless they were added to. The trustee may have bought more Duke Power Company stocks or bonds during that time, but as far as I know they still have what they started out with. Money was paid out to the beneficiaries from time to time, and the remaining amount of income was invested. Some of that may have been invested in Duke Power Company bonds; I could not tell without looking at the records. The item in Section 1 of Exhibit B to the stipulation, showing an increase of \$21,635.44 up to the time of the accounting, showed an increase in principal; it did not result from income; it resulted from an increase in the market value of securities or from profits taken through the liquidation of securities. The accounting is in two sections, the first section being as to principal and the second section showing income, which section would also contain any income investments. Apparently, the securities in which income was invested were all carried at inventory price; there had been no profit or loss due to sales of such securities. The accounting shows that up to the time of the accounting, income of \$962,359.54 had been received in the trust for Anthony Newton Duke, and that all payments made for necessary expenses chargeable against income, as shown on Schedule F, amounted to about \$29,000.00. It showed the amount of all commissions retained on account of income, on Schedule D, as \$10,000.00, and that the amount of all payments made to or for the account of Anthony Newton Duke from income up to the time of the accounting was \$32,500.00. That would be from the time the trustees took over the principal or corpus in 1926 up until the time of the accounting, which covered the 338 339

Statement of the Evidence.

340 period to December 31, 1930. The exhibit to which counsel is referring is Schedule I to Exhibit B attached to the stipulation.

Petitioners' Exhibit 2 is the income account of the trust for Anthony Newton Duke; this exhibit shows as credits all receipts of income for the period which it covers, and shows as debits all disbursements of income. On February 1st there is a payment of \$2,500.00 to the beneficiary's guardian for support, maintenance and education; on page 37 there is one payment to the guardian of \$2,500.00; on page 38 there is no such debit; on page 39 there is a payment to the guardian of \$2,500.00 on April 30th; on page 341 40 there is no such debit; on page 41 there is no such debit; on page 42 there is no such debit; on page 43 there is a payment to the guardian on July 31st of \$2,500.00; on page 44 there is no such debit; on page 45 there is a payment to the guardian on October 31st of \$2,500.00. Starting with page 36, we have certain debits "transferred to principal account above per proof of cash as of 11/15/26 cost of 100M., State of New Jersey bonds". This shows certain investments out of the funds from the income account in certain bonds and securities. That is the way the accounts were handled generally; we paid certain comparatively small amounts to the guardian for the beneficiaries; we charged against the income account the ordinary current expenses of administering the trusts, and the balance 342 was invested in securities. Both trusts were handled in substantially the same manner.

The Federal income tax return on Form 1040 for the year 1931 of the trust under the will of Angier B. Duke for Angier B. Duke, Jr., was offered and received in evidence as Respondent's Exhibit A. The Federal income tax return for the year 1931, on Form 1040, of the trust under the will of Angier B. Duke for Anthony Newton Duke, was

Statement of the Evidence.

offered and received in evidence as Respondent's Exhibit B. 343
 The fiduciary return of income for the year 1931 of the trust under the will of Angier B. Duke for Angier B. Duke, Jr., was offered and received in evidence as Respondent's Exhibit C. The fiduciary return of income for the year 1931 of the trust under the will of Angier B. Duke for Anthony Newton Duke was offered and received in evidence as Respondent's Exhibit D. Said exhibits are attached hereto and made a part hereof.

The foregoing statement of the evidence contains in substance all the evidence introduced in the above cases which is material to the questions and issues presented and involved in the several assignments of error appended to and constituting a part of the petition for review heretofore filed in these cases. 344

Dated this 18th day of August, 1939.

ROLLIN BROWNE,
 GEORGE CRAVEN,
 Counsel for Petitioners on Review.

J. P. WENCHEL,
 Chief Counsel for Bureau of Internal Revenue,
 Counsel for Respondent on Review.

Approved and ordered filed this 8th day of Sept. 1939. 345

(s) R. L. DISNEY,
 Member.

Respondent's Exhibit A.

346

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN \$5,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

FOR CALENDAR YEAR 1931

File This Return With the Collector of Internal Revenue for Your District
on or Before March 15, 1932

File Code 791
Serial Number 300408
District 2—New York

TRUST ANGIER B. DUKE JR. U/W A. B. DUKE #9038—85
c/o CITY BANK FARMERS TRUST CO. TTEE.
22 WILLIAM ST. NEW YORK CITY

347

Item and
Instruc-
tion No.

INCOME

4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source	\$ 738.27	
10. Dividends on Stock of Domestic Corporations	104,069.73	
11. Other Income (including dividends on stock of foreign corporations). (State nature of income)		
(a) British American Tobacco)	21,768.38	
& Tobacco Securities)		
Trust Corp. Div.) withheld 509.64		
12. TOTAL INCOME IN ITEMS 1 TO 11		\$126,576.38

DEDUCTIONS

348

14. Taxes Paid. (Explain in Schedule F) N. Y. Income	\$ 5,211.88	
18. Other Deductions Authorized by Law. (Ex- plain in Schedule F) Balance of British tax not claimed in item #54	2,163.70	
19. TOTAL DEDUCTIONS IN ITEMS 13 TO 18		7,375.58
20. NET INCOME (Item 12 minus Item 19)		\$119,200.80

Respondent's Exhibit A.

COMPUTATION OF TAX (See Instruction 23)

349

33. Net Income (Item 20 above)	\$119200.80
LESS:	
35. Dividends (Item 10)	\$104069.73
37. Personal Exemption	1500.00
38. Total of Items 34 to 37	103569.73
39. Balance (Item 33 minus 38)	\$ 13631.07
40. Amount taxable at 1½% (not over \$4,000)	4000.00
41. Balance (Item 39 minus 40)	\$ 9631.07
42. Amount taxable at 3% (not over \$4,000)	4000.00
43. Amount taxable at 5% (Item 41 minus 42)	\$ 5631.07
44. Normal Tax (1½% of Item 40)	\$ 60.—
45. Normal Tax (3% of Item 42)	120.—
46. Normal Tax (5% of Item 43)	281.55
47. Surtax on Item 20 (see Instruction 23)	15500.16
48. Tax on Net Income (total of Items 44 to 47)	\$ 15961.71
49. Tax on Capital Gain or Loss (12½% of Col. 8, Sched. D) loss	161.88
50. Total of or difference between Items 48 and 49	\$ 15799.83
52. Total Tax (Item 50 minus 51)	\$ 15799.83
53. Less Income Tax Paid at Source	1.10
54. Income Tax paid to a foreign country or U. S. possession	2930.94
55. Balance of Tax (Item 52 minus Items 53 and 54)	\$ 12866.90

350

351

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

CITY BANK FARMERS TRUST COMPANY

A. D. MARKS
Ass't Trust Officer

(Sworn to March 14, 1932.)

Respondent's Exhibit B.

- 352 Schedule "E" of the return, omitted from the printed record, shows the receipt of \$71,833.26 from obligations of a state, territory or political subdivision thereof, and the receipt of \$513.51 from Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of U. S. possessions.

Respondent's Exhibit B.**INDIVIDUAL INCOME TAX RETURN**

353

FOR NET INCOME FROM SALARIES OR WAGES OF MORE THAN \$5,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

FOR CALENDAR YEAR 1931

File This Return With the Collector of Internal Revenue for Your District
on or Before March 15, 1932

File Code 791
Serial Number 301427
District 2—New York

TTEE. ANTHONY NEWTON DUKE & w A. B. DUKE # 9037—85
CITY BANK FARMERS TRUST CO. TRUSTEE
22 WILLIAM ST. NEW YORK CITY

Item and Instruc- tion No.	INCOME	
354	3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)	\$ 587.80
	10. Dividends on Stock of Domestic Corporations	104,055.62
	11. Other Income (including dividends on stock of foreign corporations). (State nature of income)	
	(a) British American Tobacco Co. & Tobacco Securities Trust Corp.	21,764.42
) Withheld \$5093.71	
12.	TOTAL INCOME IN ITEMS 1 TO 11	\$126,407.93

Respondent's Exhibit B.

DEDUCTIONS

355

14. Taxes Paid. (Explain in Schedule F) N. Y. State	\$ 5,203.96
18. Other Deductions Authorized by Law. (Explain in Schedule F) Balance of British Tax not claimed item #54	2,157.02
19. TOTAL DEDUCTIONS IN ITEMS 13 TO 18	<u>7,360.98</u>
20. NET INCOME (Item 12 minus Item 19)	\$119,046.95

COMPUTATION OF TAX (See Instruction 23)

33. Net Income (Item 20 above)	\$119046.95
LESS:	
35. Dividends (Item 10)	\$104055.62
37. Personal Exemption	1500.00
38. Total of Items 34 to 37	<u>105555.62</u>
39. Balance (Item 33 minus 38)	\$ 13491.33
40. Amount taxable at 1½% (not over \$4,000)	<u>4000.00</u>
41. Balance (Item 39 minus 40)	\$ 9491.33
42. Amount taxable at 3% (not over \$4,000)	<u>4000.00</u>
43. Amount taxable at 5% (Item 41 minus 42)	\$ 5491.33
44. Normal Tax (1½% of Item 40)	\$ 60.—
45. Normal Tax (3% of Item 42)	120.—
46. Normal Tax (5% of Item 43)	274.57
47. Surtax on Item 20 (see Instruction 23)	<u>15469.39</u>
48. Tax on Net Income (total of Items 44 to 47)	\$ 15923.96
49. Tax on Capital Gain or Loss (12½% of Col. 8, Sched. D) loss	<u>100.09</u>
50. Total of or difference between Items 48 and 49	\$ 15814.87
52. Total Tax (Item 50 minus 51)	\$ 15814.87
53. Less Income Tax Paid at Source	1.90
54. Income Tax paid to a foreign country or U. S. possession	<u>2936.69</u>
55. Balance of Tax (Item 52 minus Items 53 and 54)	\$ 12876.28

356

357

Respondent's Exhibit B.

358

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

CITY BANK FARMERS TRUST COMPANY

A. D. MARKS
Ass't Trust Officer

(Sworn to March 14, 1932.)

359

Schedule "E" of the return, omitted from the printed record, shows the receipt of \$71,381.79 from obligations of a state, territory, or political subdivision thereof, or the District of Columbia, and the receipt of \$514.10 from Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and U. S. possessions.

360

Respondent's Exhibit C.

FIDUCIARY RETURN OF INCOME

361

FOR CALENDAR YEAR 1931

File This Return Not Later Than the 15th Day of the Third Month
Following the Close of the Taxable Year

File Code 791
Serial Number 954024
District 2—N. Y.

Name of Estate or Trust

TTEE. ANQIER B. DUKE JR. U/W A. B. DUKE #9038 P-85

Name and Address of Fiduciary

CITY BANK FARMERS TRUST CO.
22 WILLIAM ST. NEW YORK CITY

362

Item and
Instruc-
tion No.

INCOME

- | | |
|-----------------------------------------------------------------------------------------------------------------------|--------------|
| 2. Interest on Bank Deposits, Notes, and Corpora-
tion Bonds, etc. (except interest on tax-free
covenant bonds) | \$ 682.47 |
| 3. Interest on Tax-free Covenant Bonds upon
which a tax was paid at source | 100.00 |
| 6. Profit from Sale of Real Estate, Stocks, Bonds,
etc. (From Schedule C) Schedule Attached
(D) | 1295.06 Loss |
| 7. Dividends on Stock of Domestic Corporations | 109438.90 |
| 8. Other Income (including dividends on stock of
foreign corporations). (State nature of income) | |
| (a) Dividends British American Tobacco and
Tobacco Securities Trust Ltd. Net | \$17533.97 |
| British Tax withheld | 5357.48 |
| | 22891.45 |

363

9. TOTAL INCOME IN ITEMS 1 TO 8 \$131817.76

DEDUCTIONS

- | | |
|----------------------------------------------------------------------|-------------|
| 11. Taxes Paid N Y State Income Tax on 1930
Undistributed | \$ 5211.88 |
| 15. Other Deductions Authorized by Law. (Ex-
plain in Schedule E) | 6.11 |
| 16. TOTAL DEDUCTIONS IN ITEMS 10 TO 15 | 5217.99 |
| 17. NET INCOME (Item 9 minus Item 16) | \$126599.77 |

Respondent's Exhibit C.

364 18.

BENEFICIARIES' SHARES OF INCOME AND CREDITS
(See Instruction 18)

1. NAME AND ADDRESS OF EACH BENEFICIARY (Designate nonresident aliens)	3. DIVIDENDS (Item 7 above, or Item 17, whichever amount is smaller)	4. BALANCE OF NET INCOME (Item 17 minus Item 7)	5. CAPITAL NET GAIN OR LOSS (Schedule D, Column 8)	6. INCOME TAX PAID AT SOURCE (2% of Item 3)	7. INCOME TAX PAID FOREIGN COUNTRIES OR UNITED STATES POSSESSIONS
(a) Angier B. Duke (minor) c/o Cordella B. Robertson, c/o T. Markoe Robertson, Esq., 420 Lexington Ave. NYC.	\$ 5,369.17	\$ 1,161.16		\$.10	\$ 262.84
(f) Undistributed	104069.73	17294.77	\$1295.06 loss	1.90	5004.64
365 (m) TOTALS	\$100438.90	\$18455.93	\$1295.06 loss	\$2.—	\$5337.48

19.

NONTAXABLE OBLIGATIONS, LIBERTY BONDS, ETC.
(See Instruction 19)

1. OBLIGATIONS OR SECURITIES	3. INTEREST RECEIVED
(a) Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia	\$75529.28
(c) Liberty 3½% Bonds and other obligations of U. S. issued before Sept. 1, 1917, and obligations of U. S. possessions	540.—

Angier B. Duke Jr. U/W A. B. Duke

SALES SCHEDULE

366	Date Sold	Security	Sales Price	Cost	Date acquired
	1/6	6M Board of Ext of City School Clev. Ohio. 6/38	\$6,673.91	\$6,915.00	2/26/26
		25M Hudson Co. N. J. Jail Bonds 4½s 7/1/32	25,347.53	25,281.25	11/29/23
		10M " " " Newark Tur Imp. "	10,139.01	10,112.50	"
		17M " " " b.Hospital "	17,236.32	17,191.25	"
		1M " " " Road Bonds "	1,013.90	1,011.25	"
	6/12	A. Warrant for 8 2/8 Shs. Aluminum Ltd.	138.91	117.12	1928
	7/3	1M County of Hudson N. J. 4½/31	1,000.00	1,046.51	1926
		3M " " " " "	3,000.00	3,139.53	"
		12M " " Duval Fla. 5/50	11,700.00	12,000.00	"
	7/1	6M State of Montana 5½/41	6,000.00	6,322.50	2/26/26
	9/14	B. Warrant for 8 Shs. Aluminum Ltd.	94.84	113.57	"
	12/18	100 Shs. Amer. Cigar Co. Com.	7,996.00	8,475.00	2/26/26
			\$90,430.42	\$91,725.48	
				90,430.42	
			Loss	\$1,295.06	

Respondent's Exhibit D.**FIDUCIARY RETURN OF INCOME**

367

FOR CALENDAR YEAR 1931

File This Return Not Later Than the 15th Day of the Third Month
Following the Close of the Taxable Year

File Code 701
Serial Number 053905
District 2—N. Y.

Name of Estate or Trust

TTEE. ANTHONY NEWTON DUKE U/W A. B. DUKE

#0037—P85

Name and Address of Fiduciary

CITY BANK FARMERS TRUST CO.
22 WILLIAM ST. NEW YORK CITY

368

Item and
Instruc-
tion No.

INCOME

- | | | |
|-----------------------------------------------------------------------------------------------------------------------|-------------|-----------|
| 2. Interest on Bank Deposits, Notes, and Corpora-
tion Bonds, etc. (except interest on tax-free
covenant bonds) | \$ 523.83 | |
| 3. Interest on Tax-free Covenant Bonds upon
which a tax was paid at source | 100.00 | |
| 6. Profit from Sale of Real Estate, Stocks, Bonds,
etc. (From Schedule C) Schedule "D" Loss | 872.61 loss | |
| 7. Dividends on Stock of Domestic Corporations | 109,443.90 | |
| 8. Other Income (including dividends on stock of
foreign corporations). (State nature of income) | | |
| (a) Dividends British American Tobacco &
Tobacco Securities Trust Ltd. Net | 17533.97 | |
| British Tax withheld | 5357.48 | 22,891.45 |

369

9. TOTAL INCOME IN ITEMS 1 TO 8

\$132,086.57

DEDUCTIONS

- | | |
|----------------------------------------------------------------------|-------------|
| 11. Taxes Paid N. Y. State Income Tax on 1930
(Undistributed) | \$ 5,203.96 |
| 15. Other Deductions Authorized by Law. (Ex-
plain in Schedule E) | 5.50 |

16. TOTAL DEDUCTIONS IN ITEMS 10 TO 15

5,209.46

17. NET INCOME (Item 9 minus Item 16)

\$126,877.11

Respondent's Exhibit D.

370 18.

BENEFICIARIES' SHARES OF INCOME AND CREDITS

(See Instruction 18)

1. NAME AND ADDRESS OF EACH BENEFICIARY (Designate nonresident aliens)	3. DIVIDENDS (Item 7 above, or Item 17, whichever amount is smaller)	4. BALANCE OF NET INCOME (Item 17 minus Item 7)	5. CAPITAL NET GAIN OR LOSS (Schedule D, Column 8)	6. INCOME TAX PAID AT SOURCE (2% of Item 3)	7. INCOME TAX PAID FOREIGN COUNTRIES OR UNITED STATES POSSESSIONS
(a) Anthony N. Duke (Minor) c/o Cordelia B. Robertson, Gdn., c/o T. Markoe Robertson, Esq., 420 Lexington Ave. NYC.	\$ 5388.28	\$ 1157.47		\$.10	\$ 263.77
(g) Undistributed	104055.62	17148.35	\$872.61	loss 1.90	5093.71
(m) TOTALS	\$109443.90	\$18305.82	\$872.61	loss 2.00	\$5357.48

371

19.

NONTAXABLE OBLIGATIONS, LIBERTY BONDS, ETC.

(See Instruction 19)

1. OBLIGATIONS OR SECURITIES	3. INTEREST RECEIVED
(a) Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia	\$74978.36
(c) Liberty 3½% Bonds and other obligations of U. S. issued before Sept. 1, 1917, and obligations of U. S. possessions	540.00

Anthony Newton Duke U/W A. B. Duke

SALES SCHEDULE

Date Sold	Security	Sales Price	Cost	Date acquired
1/6	25M Hudson County N. J. County Jail 4½/33	\$25,458.66	\$25,281.25	11/29/26
	13M Hudson County N. J. Hospital 4½/31	13,238.50	13,146.25	"
	15M Hudson County N. J. Nwk. Tpke Impr. 4½/1933	15,275.20	15,168.75	"
	6M Bd of Ed. Cleveland, Ohio. 6/38	6,673.62	6,915.00	2/26/26
6/12	A. Warrants for 8 4/8 Shs Aluminum Ltd.	143.12	120.67	1928
7/3	12M County of Duval Fla. 5/50	11,790.00	12,000.00	2/26/26
7/1	6M State of Montana 5½/41	6,000.00	6,322.50	"
9/14	B. Warrant For 8 Shares Aluminum Ltd.	94.98	113.57	1928
12/18	100 Shs. Amer. Cigar Co. Com.	7,996.00	8,475.00	1926
		\$86,670.38	\$87,542.90	
			86,670.38	
		Loss ...	\$ 872.61	

Petitioners' Exhibit 1.

TRUSTEE U/W ANGIER B DUKE

ANTHONY NEWTON DUKE

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1930						
	Dec 31	Balance Forwarded		607,392.03	594,244.66	13,147.37	13,147.37
	1931						
0037 P	Jan 16	Sold 25M Hud Co N J Co Jail Bond 4½s due 7/1/33 3½ basis less ½ net & int			25,458.06		
"		Sold \$13000 Hud Co N J Hosp for Insane 4½s due 7/1/33 3½ basis less ½ net & int			13,238.50		
"		Sold 15M Hud Co N J Newark Turnpike Imp 4½s due 7/1/33 3½ basis less ½ net & int			15,275.20		
"		Sold 6M Bd of Education of City School Dist of City of Cleve Ohio Bldg Bds 6s due 6/1/38 dated 6/1/20 4 10 basis less ¾ net & int			6,073.92	47,498.91	47,498.91
0037 P	20	Trsf'd fr Inc a/c as above per proof of cash					
		As of 11/15/26 cost of 100M State of N J			101,596.44		
		As of 11/23/26 50M			50,750.00		
		As of 11/17/26 20M City of Det			20,500.62		
		As of 8/11/29 76M Co of Hud			76,902.40		
		As of 8/27/29 19M City of Cleve			19,000.00		
		As of 8/3/29 20M City of Richmon			20,249.97		
		As of 9/6/29 30M State of Maine			29,403.32		
		As of 10/1/29 540 shrs Duke Pr Co			54,000.00		
		As of 11/30/26 cost of Trsf Stamps			1.00	419,902.66	419,902.66
"		Trsf'd to Inc a/c as above per proof of cash					
		As of 2/27/20 recd fr Est A B Duke		250,000.00			
		As of 9/5/29 proceeds sale Duke Pr Rts		2,049.80			
		"		6,599.40			
		"		19,698.20			
		"		4,187.10			
		"		39,833.90			
		"		5,861.90			
		9/6/29		10,948.80			
		9/10/29		1,888.05			
		"		21,447.60			
		4/21/26 cost of Trsf Stamps		.84			
		3/15/28		2.84			
		4/28/26 proceeds sale Amer Mach Rts		112.50			
		4/11/27 proceeds sale Gty Tr Co		4,339.79			
		4/5/29 proceeds sale Texas Corp		13,134.70		39,797.24	39,797.24
0037 P	20	Pd C B F T Co being comm for receiving \$3,844,063.23 & paying out \$12,806.75 of princ per Dec et 1/2/31		38,641.71			
"		Pd T B C & M being prop shr of costs & disb as taxes per Dec 1/2/31		30.53		1,125.00	1,125.00
0037 P	May 28	Cost of ins \$7.40 and postage 11¢ on 74M City of Phil 4½s		7.51		1,117.49	1,117.49
0037 P	May 29	To cover registered mail charge in connection with exchange 74M City of Phil		1.68		1,115.81	

Forward Sheet 8

Petitioners' Exhibit 1.

12

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	May 29	Balance Brought Forward				1,115.81	1,115.
9037 P	June 10	Cost of Fed Stamps for tfr of 64 Rts Aluminum Ltd A Rts		.16		1,115.65	1,115.
9037 P	June 12	Sold A Warrant for 84/8 shares Aluminum Ltd 8 at 17 less bk & tax 4 Rts at 2 net less tax			143.12	1,258.77	1,258.
9037 P	Jul 1	Red 6M State of Montana			6,000.00	7,258.77	7,258.
9037 P	Jul 3	Sold 12M County of Duval of Florida Spl School Dist No. 1 of Duval County 5% Bonds due 4/1/50 98 1/4 net and int			11,700.00	19,048.77	19,048.
9037 P	Jul 6	Bt 18M City of Phil 4s due 2/1/53 3 85 basis less 1/4 net and int		18,370.31		678.46	678.
9037 P	Sep 15	Warrant 8 sh Aluminum Ltd 7 at 12 less bkge & tax 1 at 12 net less tax			94.98	773.44	773.
9037 P	Dec 17	Sold 100 shs American Cigar Co Com			7,906.00	8,709.44	8,709.
	1932						
9037 P	Jan 4	Bought \$5000 State of New Jersey 4 1/4% 7/1/40 4 40% basis net & int		4,947.32		3,822.12	3,822.
9037 P	Jan 8	Bt \$3000 City of St Paul Minn 4 1/2s due Nov 1 1932 \$4.85 basis net & int		2,863.16		958.96	958.
9037 P	Jul 7	Bt \$12000 State of Minnesota 4 1/4% due 6/1/40 99 3/4 net & int		11,970.00		11,011.04	11,011.
9037 P	Jul 21	Sold \$12M State of Minnesota 4 1/4% due 6/1/40 99 3/4 net & int/ to reverse entry of 7/7/32/			11,970.00	958.96	958.
As of 7/6/32							
9037 P	Sep 10	Recd from execs Est Angier B Duke being 1/2 shr in proceeds sale 2 tickets Natl Mens Championship West Side Tennis Club			3.75	962.71	962.
9037 P	23	Subscription Warrants to subscribe to 7 shrs Aluminum Co Com Ltd Series C 1 at 5 6 at 6 1/2 less bkge & tax			43.20	1,005.91	1,005.
	1933						
9037 P	Mar 13	Paid Coll of Int Rev payment of 1932 Fed Inc Tax on accretions to princ		10.73		995.18	995.
9037 P	Apr 3	18 3/4 shrs Durham Cotton Manufacturing Co Cap Retirement at 50.00 per shr 937.50 Less Coll Charges 1/10 of 1% .94			936.56	1,931.74	

Forwarded to Sheet 9

Petitioners' Exhibit 2.

TTEE U/W ANGIER B DUKE

ANTHONY NEWTON DUKE

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1930	Balance Forwarded		821,989.98	852,201.07	30,211.09	30,211.09
9037 I	Dec 1	Divd 1500 Liggett & Myers Tob Co Com	6		1,500.00		
"		Divd 1100 Liggett & Myers Tob Co Com B	6		1,100.00	32,811.09	32,811.09
9037 O		Regd 10M City of Cleve	7		225.00		
"		Regd 9M City of Cleve	7		202.50	33,239.19	33,239.19
9037 I		Ex Divd 1875 shrs Ame Machine & Foundry Co Com	6		375.00	33,614.19	33,614.19
9037 I	11	Pd Coll Int Rev 4th quart install 1929					
		Fed Inc Tax on undistributed inc		5,253.42		28,360.77	28,360.77
9037 I	13	Divd 1750 Tob Sec Tr Co Ltd	6		892.50		
"		Divd 1750 Tob Sec Tr Co Ltd	6		222.25	29,475.52	29,475.52
9037 I	15	Divd 87 Stand Oil Ind	6		54.69		
"		8M Co of Fairfax Va	7		200.00		
"		2M City of Newark N J	7		42.50		
"		9M City of Newark N J	7		191.25		
"		14M City of Newark N J	7		297.50		
"		40M City of Det Mich	7		850.00		
"		20M City of Det Mich	7		450.00	31,561.46	31,561.46
9037 I	18	Bought 25M City of Det Mich 4 1/8 due 12/15/43 90% net & int		24,906.25			
"		Accd int 12/15 to 12/18 on above		8.86		6,046.35	6,046.35
9037 I	24	Int to 11/26/30 inc princ			209.48		
					1.26	6,857.00	6,857.00
9037 I	30	Coll chg ded on cpas aggregating \$980 of Co of Westchester		.24		6,856.85	6,856.85
9037		Coll chg ded on cpas aggregating \$1020 of City of Newark N J		.25		6,856.60	6,856.60
9037 I	31	Divd 31 Gty Tr Co	6		153.00	7,011.60	7,011.60
9037 I		Divd 125 Durham & So Ry Co	6		312.50	7,324.10	7,324.10
9037 I	Jan 2	12M Wash Md	7		270.00		
"		50M State of W Va	7		1,000.00		
"		16M State of W Va	7		340.00		
"		9M "	7		191.25		
"		59M State of Tenn	7		1,327.50		
"		6M State of No Car	7		135.00		
"		25M State of No Car	7		562.50		
"		6M State of Montana	7		163.00		
"		12M Spokane Co Wash	7		283.00		
"		2M Middlesex Co N J	7		42.50		
"		1M Hud Co N J	7		222.50		
"		2M "	7		45.00		
"		14M "	7		315.00		
"		15M Hud Co	7		337.50		
"		2M "	7		45.00		
"		17M "	7		382.50		
"		25M "	7		562.50		
"		12M Ea Bay Municipal Utility Dist Cal	7		300.00		
"		10M Co of Sumter S C	7		250.00		
"		20M City of Richmond Va	7		450.00		
"		1M "	7		22.50	14,375.35	

Forwarded

852,150.00

806,534.35

14,375.35

Petitioners' Exhibit 2.

12

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	Jan 2	Balance Forwarded		852,159.00	866,534.35	14,375.35	14,375.35
9037 I	Jan 2	11M City of Richmond Va	7		247.50		
"		38M City of Phila	7		807.50		
"		20M City of Phila	7		425.00		
"		8M City of Phila	7		160.00		
"		2M City of Milw	7		45.00		
"		57M City of Milw	7		1,282.50		
"		23M City of Memphis Tenn	7		575.00		
"		1M "	7		23.75		
"		1M "	7		25.00		
"		20M City of Kansas City Mo	7		450.00		
"		10M "	7		225.00		
"		12M City of Greenville S C	7		270.00		
"		12M City of Dubuque Iowa	7		270.00		
"		12M City of Detroit Mic	7		270.00	19,451.60	19,451.60
9037 I		Regd 12M State of Cal	7		240.00	19,691.60	19,691.60
9037 I		165M State of N J	7		3,500.25		
"		10M State of N J	7		212.50	23,410.35	23,410.35
9037 I		11658 62/100 shrs Duke Pr Co	6		14,572.50	37,982.85	37,982.85
9037 I		Divd 1629 3/5 U S Tob Co Com	6		1,629.00	39,611.85	39,611.85
9037 I		Divd 907 Cannon Mills Co Com	6		308.80	40,010.65	40,010.65
9037 I		Divd 3300 Texas Corp	6		2,475.00	42,485.65	42,485.65
9037 I		Divd 603 Aluminum Co of Amer Pfd	6		904.50	43,390.15	43,390.15
"		Divd 25 Erwin Cotton Mills Co Pfd	6		75.00	43,465.15	43,465.15
9037 I		Divd 594 Lehigh Valley Coal Corp Pfd	6		445.50		
"		Divd 1258 Durham Hold Corp Com	6		1,258.00		
"		Divd for Oct	6		1,258.00	46,426.65	46,426.65
9037 I	12	125 shrs Piedmont & No Ry Co	6		156.25	46,582.90	46,582.90
9037 I	15	2M City of Troy N Y	8		40.00		
"		3M "	8		60.00		
"		3M "	8		60.00		
"		2M "	8		40.00		
"		2M "	8		40.00	46,822.90	46,822.90
9037 I	16	Accd Int 1/1 to 1/16 on 25M Hud Co N J	7		46.88		
"		Accd Int 1/1 to 1/16 on 13M Hud Co N J	7		24.37		
"		Accd Int 1/1 to 1/16 on 15M Hud Co N J	7		28.13		
"		Accd Int 12/1 to 1/16 on 6M Bd of Education City of Cleve O	7		45.00	46,967.28	46,967.28
9037 I	20	Trsfd to princ a/c above per proof of cash As of 11/15/26 cost of 100M State of N J					
		11/17/26 cost of 20M City of Detroit			101,596.44		
		11/23/26 cost of 50M State of N J			20,500.62		
		8/3/29 cost of 76M Co of Hud	27		50,750.00		
		8/27/29 19M City of Cleve			70,902.40		
		8/3/29 20M City of Richmond V			19,000.00		
		9/6/29 30M State of Maine			20,249.97		
		10/1/29 540 shrs Duke Pr Co			29,403.32		
		11/30/26 traf stamps	27		54,000.00		
				1.00		325,436.47	

Forwarded to Sheet 37

Petitioners' Exhibit 2.

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931			1,224,562.75	899,126.28		
	Jan 20	Balance Brought Forward				325,436.47	325,436.47
037 I	Jan 20	Trsf'd fr princ a/c as above per proof of chg as of 2/27/26 rec'd fr Est A B Duke As of 9/5/29 proceeds sale Duke Pr Rts			250,000.00 2,049.80 6,509.40 19,698.20 4,187.10 39,833.90 5,861.90 10,948.80 1,888.05 21,447.60 .84 2.84 112.50 4,339.79 13,134.70		
	9/6/29	"	12			54,068.95	54,068.95
	9/10/29	"				54,068.70	54,068.70
	4/21/26	cost of trsf stamps					
	3/15/28	cost of trsf stamps					
	4/28/26	proceeds sale Amer Mach Rts					
	4/11/27	" Gty Tr Co					
	1/5/29	" Texas Corp					
037 I	26	Coll chg ded on \$807.50 City of Phila cpns	23	.25		54,068.70	54,068.70
037 I	27	Coll chg ded on \$3718.75 State of N J	23	.38			
"		Coll chg ded on \$270 City of Dubuque cpns	23	.70		54,067.62	54,067.62
037 I	28	Coll chg ded on \$1710 Hud Co cpns	23	.28		54,067.34	54,067.34
037 I		Divd 14000 British Amer Tob Co Ltd Final 1106 13 4					
		Interim 583 6 8 at 4 854073	3		8,494.62	63,161.96	63,161.96
037 I	31	Check to Cordella Biddle Robertson gen gdn Anthony Newton Duke amt due for support maintenance & education of Anthony Duke	27	2,500.00		60,661.96	60,661.96
037 I		Divd 125 Durham & So Ry Co	6		1,250.00	61,911.96	61,911.96
037 I	Feb 2	30M City of Trenton N J	7		637.50		
"		25M City of Detroit	7		562.50	63,111.96	63,111.96
037 I		1875 Amer Machine & Fdry Co Com	6		656.25	63,768.21	63,768.21
037 I	6	Divd 728 Erwin Cotton Mills Co Com	6		1,092.00	64,860.21	64,860.21
037 I	27	Coll chg ded on \$637.50 City of Trenton N J	23	.22		64,859.99	64,859.99
037 I	Mar 2	30M State of Maine	7		600.00		
"		6M Co of Guilford N C	7		157.50		
"		2M City of Toledo Ohio	7		45.00		
"		2M City of Toledo	7		45.00		
"		5M City of Toledo	7		112.50		
"		5M City of Toledo	7		112.50		
"		3M City of Toledo	7		67.50		
"		16M City of Toledo	7		360.00		
"		16M City of Toledo	7		360.00		
"		15M City of Oklahoma	7		375.00		
"		25M City of Nash Tenn	7		625.00		
"		27M City of Minn Minn	7		540.00		
"		25M City of Minn	7		500.00		
"		19M City of Minn	7		380.00		
"		4M City of Los Angeles	7		95.00	69,234.99	

Petitioners' Exhibit 2.

130

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	Mar 2	Balance Brought Forward				69,234.99	69,234.99
9037 I	Mar 2	2M City of Los Angeles	7		47.50		
"		40M City of Cleve	7		900.00		
"		20M City of Balt	7		400.00	70,582.49	70,582.49
9037 I		Divd 4100 Liggett & Myers Tob Co Com B	6		1,100.00		
"		Extra Divd	6		1,100.00		
"		Divd 1500 Liggett & Myers Tob C3 Com	6		1,500.00		
"		Extra Divd	6		1,500.00	75,782.49	75,782.49
9037 I	Mar 13	Reed from Estate of Angler B Duke being 6 months int 2/28/31 on 55M New York City 4 1/4s held by N Y State Tax Comm	8		584.37	76,366.86	76,366.86
9037 I	Mar 16	Divd 87 Stand Oil Co of Ind Cap	6		43.50	76,410.36	76,410.36
9037 I	Mar 17	Paid Coll Int Rev 1930 Income Tax 1st quarterly installment on Undistributed Income	27	4,535.19		71,875.17	71,875.17
9037 I	Mar 17	Aced int fr 2/27/31 to 3/17/31 60M City of Phil Pa 4 1/4s due 2/27/81/51	23	127.50			
		Bought 60M City of Phil Pa 4 1/4s due 2/27/81/51 103% net & bkge	27	62,025.00		9,722.67	9,722.67
9037 I	Mar 17	Aced int fr 2/27/31 to 3/17/31 14M City of Phil Pa 4 1/4s due 2/27/81/51	23	29.75			
		Bought 14M City of Phil Pa 4 1/4s due 2/27/81/51 103% net & bkge	27	14,472.50		4,779.58	4,779.58
9037 I	Mar 31	Divd 31 Guaranty Tr Co	6		155.00	4,624.58	4,624.58
9037 I	Mar 31	Divd 14000 British Amer Tobacco Co Ltd L 583 6 8 4 85 1/2	3		2,832.10	1,792.48	1,792.48
9037 I	Apr 1	5M State of Oregon	7		112.50		
"		3M "	7		67.50		
"		4M "	7		90.00		
"		2M Hudson & Manhattan RR Co	1		50.00		
"		15M Erie County N Y	8		318.75		
"		6M County of Erie N Y	8		127.50		
"		19M County of Erie N Y	8		403.75		
"		12M County of Duval Fla	7		300.00		
"		25M City of Yonkers N Y	8		562.50		
"		8M City of Summit N J	7		160.00		
"		1M City of Summit N J	7		20.00		
"		1M "	7		20.00		
"		2M "	7		40.00		
"		2M "	7		40.00		
"		2M "	7		40.00		
"		10M City of Buffalo N Y	8		212.50		
"		6M City of Balt Md	7		120.00		
"		1M City of Asheville	7		23.75	916.27	

Petitioners' Exhibit 2.

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	Apr 1	Balance Brought Forward				916.27	916.27
9037 I	Apr 1	5M City of Asheville	7		118.75		
"		5M City of Asheville	7		118.75		
"		1M "	7		23.75	1,177.52	1,177.52
9037 I	Apr 1	Divd 3300 Texas Corp	6		2,475.00		
"		Divd 1258 Durham Holding Corp	6		1,258.00		
"		Divd 594 Lehigh Valley Coal Corp Pfd	6		445.50		
"		Divd 11658 62/100 Duke Power Co Cap	6		14,572.50	19,928.52	19,928.52
9037 I	Apr 1	Cost of ins 5.25 and postage 25¢ on talons 2 for 14M sh British American Tob Co Ltd	22	5.50		19,923.02	19,923.02
9037 I	Apr 1	1629 3/5 U S Tobacco Co Com	6		1,791.90		
"		Divd 997 Cannon Mills Co Com	6		398.80		
"		Divd 603 Aluminum Co of America Pfd	6		904.50	23,018.22	23,018.22
9037 I	Apr 1	Divd 125 Durham & Southern Ry Co	6		312.50	23,330.72	23,330.72
9037 I	Apr 13	Divd 125 Piedmont & Northern Rwy Co Cap	6		156.25	23,486.97	23,486.97
9037 I	Apr 14	Paid Dept of Taxation and Finance 1930 New York State Tax on Undistributed Income	20	5,203.96		18,283.01	18,283.01
9037 I	Apr 15	12M City of N Y	8		255.00	18,538.01	18,538.01
9037 I	Apr 23	Charges incurred on the collection of 531.25 coupons County of Erie	23	22		18,537.79	18,537.79
9037 I	Apr 24	Charges incurred collection \$562.50 coupons City of Yonkers	24	23		18,537.56	18,537.56
9037 I	Apr 30	Paid Cordelia Biddle Robertson gen gdn An- thony Newton Duke	27	2,500.00		16,037.56	16,037.56
9037 I	Apr 30	12M County of Georgetown S C	7		300.00	16,397.56	16,397.56
9037 I	May 1	12M Washington Md	7		270.00		
"		8M Town of Kearney	7		180.00		
"		1M "	7		22.50		
"		3M "	7		67.50		
"		4M Mayor & Council of Wilmington Del	7		90.00		
"		8M "	7		180.00		
"		6M Fed Ld Bk of New Orleans	9		135.00		
"		6M Fed Ld Bk of Houston	9		135.00		
"		5M City of Hartford Conn	7		106.25		
"		30M City of Hartford Conn	7		637.50		
"		14M "	7		297.50		
"		10M City of Jersey City N J	7		225.00	18,743.81	

Petitioners' Exhibit 2.

13

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	May 1	Balance Brought Forward				18,743.81	18,743.81
9037 I	May 1	25M City of Norfolk Va	7		625.00	19,368.81	19,368.81
9037 I	May 1	1875 Amer Machine & Foundry Co Com	6		656.25	20,025.06	20,025.06
9037 I	May 15	7M Hudson County N J	7		157.50		
"	"	10M "	7		225.00		
"	"	18M City of Newark N J	7		382.50		
"	"	10M City of Newark N J	7		212.50		
"	"	10M "	7		212.50		
"	"	10M "	7		212.50		
"	"	10M City of Detroit Mich	7		212.50	21,640.06	21,640.06
9037 I	May 21	Divd 1750 Tob Sec Tr Co	3		332.50	21,972.56	21,972.56
9037 I	May 25	Charges incurred coll \$1041.25 coupons City of Hartford Conn	23	330			
"	"	Charges incurred coll \$250 coupons City of Wilmington Del	23	20		21,971.97	21,971.97
9037 I	June 1	16M Westchester County N Y	8		320.00		
"	"	13M "	8		260.00		
"	"	6M Miami Conservancy Dist	7		165.00		
"	"	3M County of Westchester N Y	8		67.50		
"	"	20M County of "	8		400.00		
"	"	7M "	8		157.50		
"	"	12M County of Mecklenburg N C	7		285.00		
"	"	50M City of N Y	8		1,062.50		
"	"	15M City of Detroit	7		318.75	25,008.22	25,008.22
9037 I	June 1	1500 shs Liggett & Myers Tobacco Co Com	6		1,500.00	26,508.22	26,508.22
9037 I	June 1	Int regd 9M City of Cleve Ohio	7		202.50		
"	"	Int regd 10M City of "	7		225.00	26,935.72	26,935.72
9037 I	June 1	Divd 1100 Liggett & Myers Tobacco Co	6		1,100.00	28,035.72	28,035.72
9037 I	June 12	Paid Coll Int Rev 2nd Qtr Install 1930 Fed Income Tax on Undist Income	27	4,535.19		23,500.53	23,500.53
9037 I	June 15	8M County of Fairfax Va	7		200.00		
"	"	2M City of Newark N J	7		42.50		
"	"	9M City of Newark N J	7		191.25		
"	"	14M City of Newark N J	7		297.50		
"	"	40M City of Detroit Mich	7		850.00		
"	"	25M City of Detroit Mich	7		531.25		
"	"	20M City of Detroit Mich	7		450.00	26,063.03	26,063.03
9037 I	June 15	87 sh Std Oil Co of Indiana Cap	6		43.50	26,106.53	26,106.53

Forwarded Sheet 41

Petitioners' Exhibit 2.

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	June 15	Balance Brought Forward				26,106.53	26,106.53
9037 I	June 19	Int on a/c to 5/22/31			237.60	26,344.13	26,344.13
9037 I	June 25	Charges incurred coll \$1020 Newark N J coupons	23	.24			
"		Charges incurred coll \$580 Westchester County N Y coupons	24	.23		26,343.66	26,343.66
9037 I	June 30	12M Washington Md	7		270.00		
"		50M State of West Va	7		1,000.00		
"		16M State of West Va	7		340.00		
"		9M State of West Va	7		191.25		
"		59M State of Tenn	7		1,327.50		
"		6M State of North Carolina	7		135.00		
"		25M State of North Carolina	7		562.50		
"		165M State of N J	7		3,506.25	33,676.16	33,676.16
9037 I	June 30	10M State of N J	7		212.50		
"		6M State of Montana	7		165.00		
"		12M Spokane County State of Wash	7		285.00		
"		2M Middlesex County N J	7		42.50		
"		1M Hudson County N J	7		22.50		
"		2M "	7		45.00		
"		14M "	7		315.00		
"		2M "	7		45.00		
"		4M Hudson County N J	7		90.00		
"		12M East Bay Municipal Utility Dist of Cal			300.00		
"		10M Couty of Sumter S C	7		250.00		
"		20M City of Richmond Va	7		450.00		
"		1M City of "	7		22.50		
"		11M "	7		247.50		
"		38M City of Phil Pa	7		807.50		
"		20M "	7		425.00		
"		Int 4 mos 2 days \$74M City of Phil Pa	7		1,005.00		
"		8M City of Phil Pa	7		100.00		
"		2M City of Milw Wise	7		45.00		
"		57M " }	7		1,262.50		
"		23M City of Memphis Tenn	7		575.00		
"		1M "	7		23.75		
"		1M "	7		25.00		
"		20M City of Kansas City Missouri	7		450.00		
"		10M "	7		225.00		
"		12M City of Greenville S C	7		270.00		
"		12M City of Dubuque Iowa	7		270.00		
"		12M City of Detroit Mich	7		270.00	42,063.01	42,063.01
9037 I	Jun 30	Divd 31 Guaranty Tr Co	6		155.00	42,218.01	42,218.01
9037 I	Jun 30	Divd 14000 British Amer Tob Co Ltd	3		2,835.00	45,053.01	

Petitioners' Exhibit 2.

134

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	Jun 30	Balance Brought Forward				45,053.01	45,053.01
9037 I	Jul 1	Divd 594 Lehigh Valley Coal Corp Pfd	6		445.50	45,498.51	45,498.51
9037 I	Jul 1	Int regd \$12M State of Calif	7		240.00	45,738.51	45,738.51
9037 I	Jul 1	1629 3/5 U S Tob Co Com	6		1,791.90		
"		11658 62/100 Duke Power Co Cap	6		14,572.50		
"		1258 Durham Hold Corp Com	6		1,258.00	63,360.91	63,360.91
9037 I	Jul 1	3300 Texas Corp Cap	6		1,650.00	65,010.91	65,010.91
9037 I	Jul 1	603 Aluminum Co of America	6		904.50	65,915.41	65,915.41
9037 I	Jul 1	997 Cannon Mills Co Com	6		398.80	66,314.21	66,314.21
9037 I	Jul 1	125 Durham & South Ry Co	6		312.50	66,626.71	66,626.71
9037 I	Jul 2	Divd 25 Erwin Cotton Mills Co	6		75.00	66,701.71	66,701.71
9037 I	Jul 3	Aced int fr 4/1/31 to 7/3/31 12M County of Duval of Florida 5% due 4/1/50	7		153.34	66,855.05	66,855.05
9037 I	Jul 6	Aced int fr 2/1/31 to 7/6/31 18M City of Phil 4s due 2/1/53	23	10.00		66,845.05	66,845.05
9037 I	Jul 13	125 Piedmont & North Rwy Co Cap	6		156.25	67,001.30	67,001.30
9037 I	Jul 15	2M City of Troy N Y	8		40.00		
"		3M "	8		60.00		
"		3M "	8		60.00		
"		2M "	8		40.00		
"		2M "	8		40.00	67,241.30	67,241.30
9037 I	Jul 17	Proceeds of 7/1/31 coupons detached from 12M City of Dubuque Ia 4 1/8 bds due 1/1/40 being entered on a collection basis as no funds are available	23	270.00		66,971.30	66,971.30
9037 I	Jul 20	12M City of Dubuque Iowa \$270.00 Less post & ins .70	7		269.30	67,240.60	67,240.60
9037 I	28	Chgs incurred in the coll of \$1872.10 cpns of the City of Phila	23	.47		67,240.13	67,240.13
9037 I	Jul 30	Charges incurred \$517.50 County of Hudson	23	.22			
"		Charges incurred \$3718.75 State of N J	23	.38		67,239.53	

Forwarded Sheet 43

Petitioners' Exhibit 2.

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	Jul 30	Balance Brought Forward				67,239.53	67,239.53
037 I	Jul 31	Paid Cordella Biddle Robertson gen gdn Anthony Newton Duke	27	2,500.00		64,739.53	64,739.53
037 I	Jul 31	Charges incurred collection \$531.25 City of Newark N J coupons	23	531.25		64,739.31	64,739.31
037 I	Aug 1	25M City of Detroit Mich	7		562.50		
"		30M City of Trenton N J	7		637.50	65,939.31	65,939.31
037 I	Aug 1	1875 Amer Machine & Fdry Co	6		656.25	66,595.56	66,595.56
037 I	Aug 11	Accd int fr 4/15 to 8/11/31 10M City of Newark N J 4 1/2s due 4/15/58		145.00			
"		Bt 10M City of Newark N J 4 1/2s due 4/15/58 3.90 basis less 1/4 net and interest		10,963.96		55,486.60	55,486.60
037 I	Aug 11	Accd int fr 3/1/31 to 8/11/31 \$20M City of Newark N J 4 1/2s due 3/1/63	23	400.00			
"		Bt 20M City of Newark N J 4 1/2% due 3/1/63 3.90 basis less 1/4 net and int		22,117.05			
"		Accd int fr 7/1 to 8/11/31 25M City of Trenton N J 4 1/2s	23	125.00			
"		Bt 25M City of Trenton N J 4 1/2% due 15M due 7/1/44 10M due 7/1/45 3.90 basis net and int	27	26,542.80		6,301.75	6,301.75
037 I	Aug 11	Accd int fr 6/1 to 8/11/31 6M City of Newark N J 4s due 6/1/56	23	46.67			
"		Bt 6M City of Newark N J 4s due 6/1/56 3.85 basis net and int		6,142.73		112.35	112.35
037 I	Aug 20	Charges incurred collection \$637.50 coupons City of Trenton N J	23	637.50		112.13	112.13
037 I	Sep 1	30M State of Maine	7		600.00		
"		6M County of Guilford N C	7		157.50		
"		3M City of Toledo Ohio	7		67.50		
"		16M "	7		300.00		
"		2M "	7		45.00		
"		20M City of Newark N J	7		450.00		
"		5M City of Toledo Ohio	7		112.50		
"		16M "	7		300.00		
"		2M "	7		45.00		
"		5M "	7		112.50		
"		15M City of Oklahoma	7		375.00		
"		25M City of Nashville Tenn	7		625.00	3,422.13	

Forwarded Sheet 44

Petitioners' Exhibit 2.

136

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	Sept 1	Balance Brought Forward				3,422.13	3,422.13
9037 I	Sep 1	27M City of Minneapolis Minn	7		540.00		
"		25M "	7		500.00		
"		19M "	7		380.00		
"		4M City of Los Angeles Calif	7		95.00		
"		2M "	7		47.50		
"		40M City of Cleveland	7		900.00		
"		20M City of Baltimore	7		400.00	6,284.63	6,284.63
9037 I	Sep 1	Divd 1500 Ligget & Myers Tob Co	6		1,500.00		
"		Divd 1100 "	6		1,100.00	8,884.63	8,884.63
9037 I	Sep 5	Recd from Estate of Angler B Duke being 1/4 sh proceeds sale 2 tickets Natl Mens' Championship West Side Tennis Club	12		5.00		
"		Recd from Estate of Angler B Duke being 1/2 sh of 6 mos int ending Aug 31 1931 on 110M N Y C 4 1/4 % bonds held by N Y State Tax Commission	8		584.37	9,474.00	9,474.00
9037 I	Sep 12	Paid Coll Int Rev 3rd Quarterly Installment 1930 Fed Income Tax on Undistributed Income	27	4,535.19		4,938.81	4,938.81
9037 I	Sep 15	87 Stand Oil Co of Ind	6		21.75	4,960.56	4,960.56
9037 I	Sep 16	Charges coll \$400 coupons City of Balt	23	.40			
"		Charges coll \$800 State of Maine	23	.33		4,959.83	4,959.83
9037 I	Sep 30	31 shs Guaranty Tr Co	6		155.00	5,114.83	5,114.83
9037 I	Sep 30	14M British Amer Tob Co	6		2,362.50	7,477.43	7,477.43
9037 I	Oct 1	5M State of Oregon	7		112.50		
		3M State of "	7		67.50		
		4M "	7		90.00		
		2M Hud & Man R R Co	1		50.00		
		15M County of Erie N Y	8		318.75		
		6M County of Erie N Y	8		127.50		
		10M "	8		403.75		
		25M City of Yonkers N Y	8		562.50		
		1M City of Summit N J	7		20.00		
		1M "	7		20.00		
		2M "	7		40.00		
		2M "	7		40.00		
		8M "	7		160.00		
		2M "	7		40.00		
		10M City of Buffalo N Y	8		212.50		
		6M City of Balt Md	7		120.00	9,862.43	9,862.43
9037 I	Oct 1	1629 & 3/5 shrs U S Tob Co	6		1,791.90	11,654.33	11,654.33
9037 I	Oct 1	3300 shrs Tex Corp	6		1,650.00		
		11658 & 62/100 shrs Duke Pr Co	6		14,572.50	27,876.83	

Forwarded to Sheet 45

Petitioners' Exhibit 2.

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	Oct 1	Brought Forward				27,876.83	27,876.83
9037 I	Oct 1	594 shrs Lehigh Valley Coal Corp	6		445.50	28,322.33	28,322.33
9037 I	Oct 1	125 shrs Durham & So Ry Co	6		312.50	28,634.83	28,634.83
9037 I	Oct 1	603 shrs Aluminum Co of Amer	6		904.50	29,539.33	29,539.33
9037 I	Oct 2	1258 shrs Durham Holding Corp	6		1,258.00	30,797.33	30,797.33
9037 I	Oct 2	997 shrs Cannon Mills Co	6		398.80	31,196.13	31,196.13
9037 I	Oct 13	125 shs Piedmont & No Ry Co	6		156.25	31,352.38	31,352.38
9037 I	Oct 15	10M City of Newark N J	7		225.00		
		12M City of N Y	8		255.00	31,832.38	31,832.38
9037 I	Oct 22	Charges incurred in coll of \$502.50 cpns of the City of Youkers N Y	22	.22		31,832.16	31,832.16
9037 I	Oct 23	Charges incurred in coll of \$850 cpns of the County of Erie	22	.24		31,831.92	31,831.92
9037 I	Oct 31	Paid Cordella Biddle Robertson gen gdn Anthony Newton Duke	27	2,500.00		29,331.92	29,331.92
9037 I	Oct 31	12M County of Georgetown S C	7		300.00	29,691.92	29,691.92
9037 I	Nov 2	14M City of Hartford Conn	7		297.50		
		30M City of Hartford Conn	7		637.50		
		5M City of "	7		106.25		
		10M City of Jersey City N J	7		225.00		
		25M City of Norfolk Va	7		625.00		
		6M Fed Farm Loan Fed Land Bank of Houston	9		135.00	31,718.17	31,718.17
9037 I	Nov 2	6M Fed Farm Loan Fed Land Bank of New Orleans	9		135.00		
		8M Mayor & Council of Wilmington Del	7		180.00		
		4M Mayor & Council of Wilmington Del	7		90.00		
		3M Town of Kearney County of Hudson N J	7		67.50		
		1M Town of Kearney County of Hudson N J	7		22.50		
		8M Town of Kearney County of Hudson N J	7		180.00		
		12M Washington Md	7		270.00	32,663.17	32,663.17
9037 I	Nov 2	1875 shrs Amer Machine & Fdry Co	6		656.25	33,319.42	33,319.42
9037 I	Nov 11	Recd from Estate of Angler B Duke refund of int assessed by & paid to Coll Int Rev on Deficiency Estate Tax 1928					
		Acad int on same					
						73321.46	
		Less amt paid to Carlin & Rover for collecting same				14664.29	
						58657.17	
		1/4th thereof due income of this trust				14664.29	
9037 I	Nov 13	Bt 34M Cit of Newark N J 4s due 6/1/38	12		14,664.29	47,983.71	47,983.71
		4 1/4 basis less 1/4 net & int		32,569.21			
		Acad int from June 1/31 to Nov 13/31		612.00		14,802.50	

Petitioners' Exhibit 2.

138

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	Nov 13	Brought Forward				14,802.50	14,802.50
9037 I	Nov 14	728 shs Erwin Cotton Mills Co	6		1,002.00	15,804.50	15,804.50
9037 I	Nov 16	10M City of Detroit Mich	7		212.50		
		10M City of Newark N J	7		212.50		
		10M "	7		212.50		
		10M "	7		212.50		
		18M "	7		382.50		
		10M Hudson County N J	7		225.00		
		7M "	7		157.50	17,509.50	17,509.50
9037 I	Nov 17	Charges incurred in coll of \$1041.25 cpm of the City of Hartford Conn	23	.24		17,509.26	17,509.26
9037 I	Nov 28	Charges incurred in the collection of \$1020 coupons of the City of Newark	23	.24		17,509.02	17,509.02
9037 I	Dec 1	16M Westchester County N Y	8		320.00		
		13M West County N Y	8		260.00		
		6M Miami Conservancy Dist	7		165.00		
		3M County of Westchester N Y	8		67.50		
		20M "	8		400.00		
		7M "	8		157.50		
		12M County of Mecklenburg N C	7		285.00		
		50M City of New York	8		1,062.50		
		6M City of Newark N J	7		120.00		
		15M City of Detroit	7		318.75	20,665.27	20,665.27
9037 I	Dec 1	34M City of Newark N J	7		680.00		
		1500 shs Liggett & Myers Tobacco Co	6		1,500.00	22,845.27	22,845.27
9037 I	Dec 1	1100 shs Liggett & Myers Tob Co	6		1,100.00	23,945.27	23,945.27
9037 I	Dec 2	9M City of Cleveland Ohio	7		202.50		
		10M City of "	7		225.00	24,372.77	24,372.77
9037 I	Dec 9	Charges incurred in coll of \$680 cpns of City of Newark	23	.22			
		Charges incurred in coll of \$580 cpns of County of Westchester	24	.22		24,372.33	24,372.33
9037 I	Dec 12	Paid Coll of Int Rev Final Installment 1030 Fed Income Tax on Undistributed Income		4,535.19		19,837.14	19,837.14
9037 I	Dec 15	8M County of Fairfax Va	7		200.00		
		2M City of Newark N J	7		42.50		
		9M City of "	7		191.25		
		14M City of Newark N J	7		297.50		
		40M City of Detroit Mich	7		850.00		
		20M "	7		450.00		
		25M City of Detroit Mich	7		531.25	22,399.64	22,399.64
9037 I	Dec 15	87 shrs Std Oil Co of Indiana	6		21.75	22,421.39	22,421.39
9037 I	Dec 16	Dividend on 1750 shs Tobacco Sec Trust Co Ltd deferred reg shs	3		117.25		
		Dividend on 1750 shs Tobacco Sec Trust Co	3		560.00	23,008.64	

Balance Forwarded to Page 47

Petitioners' Exhibit 2.

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	Dec 16	Balance Brought Forward				23,008.64	23,008.64
037 I	Dec 18	Int to 11/22/31 on bal	2		286.23	23,384.87	23,384.87
037 I	Dec 26	Div 728 shs Erwin Cotton Mills Co	6		1,092.00	24,476.87	24,476.87
037 I	Dec 29	Charges incurred in the coll of \$531.25 coupons of the City of Newark	23	22		24,476.65	24,476.65
037 I	Dec 31	Div 31 shs Guaranty Trust Co Capt	6		155.00	24,631.65	24,631.65
	1932						
037 I	Jan 2	Int \$12000 Washington Md Suburban Dist Sanitary	7		270.00		
		Int \$50000 State of West Va	7		1,000.00		
		Int \$16000 State of West Va	7		340.00		
		Int \$9000 "	7		191.25		
		Int \$50000 State of Tenn	7		1,327.50		
		Int \$6000 State of No Carolina Institutional Bldg	7		135.00		
		Int \$25000 State of No Carolina	7		562.50		
		Int \$165000 State of N J	7		3,506.25		
		Int \$10000 "	7		212.50		
		Int \$12000 Spokane County State of Wash	7		285.00		
		Int \$2000 Middlesex County N J	7		42.50		
		Int \$1000 Hudson County N J	7		22.50		
		Int \$2000 "	7		45.00		
		Int \$14000 "	7		315.00		
		Int \$2000 "	7		45.00		
		Int \$4000 "	7		90.00		
		Int \$12000 East Bay Municipal Utility Dist of Calif	7		300.00		
		Int \$10000 County of Sumter S C	7		250.00		
		Int \$15000 City of Trenton N J	7		337.50		
		Int \$10000 "	7		225.00		
		Int \$20000 City of Richmond Va	7		450.00		
		Int \$1000 "	7		22.50		
		Int \$11000 "	7		247.50		
		Int \$38000 City of Phila Pa	7		807.50		
		Int \$20000 "	7		425.00		
		Int \$18000 "	7		360.00		
		Int \$74000 "	7		1,572.50		
		Int \$8000 "	7		100.00		
		Int \$2000 City of Milw Wise	7		45.00		
		Int \$57000 "	7		1,282.50		
		Int \$23000 City of Memphis Tenn	7		575.00		
		Int \$1000 "	7		23.75		
		Int \$1000 "	7		25.00		
		Int \$20000 City of Kansas City Mo	7		450.00		
		Int \$10000 "	7		225.00		
		Int \$12000 City of Greenville S C	7		270.00		
		Int \$12000 City of Dubuque Iowa	7		270.00		
		Int \$12000 City of Detroit Mich	7		270.00	41,615.40	41,615.40
037 I	Jan 2	1629 & 3/5 shs U S Tobacco Com Com	6		1,791.90		
		11658 & 62/100 shs Duke Power Co	6		14,572.50	57,979.80	

Petitioners' Exhibit 2.

14

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1932						
	Jan 2	Brought Forward				57,979.80	57,979.80
9037 I	Jan 2	Div 3300 shs Texas Corp	6		1,670.00	59,629.80	59,629.80
9037 I	Jan 2	Div 125 shs Durham & Southern Ry Co	6		312.50	59,942.30	59,942.30
9037 I	Jan 2	Div 603 shs Aluminum Co of Amer	6		904.50		
		Div 997 shs Cannon Mills Co Com	6		398.80	61,245.00	61,245.00
9037 I	Jan 4	Div 25 shs Erwin Cotton Mills Co	6		75.00	61,320.00	61,320.00
9037 I	Jan 4	Div 1258 shs Durham Holding Corp Com	6		1,258.00	62,578.00	62,578.00
9037 I	Jan 4	Int \$12000 State of Calif	7		240.00	62,818.00	62,818.00
9037 I	Jan 4	Accd int fr 1/1/32 to 1/4/32 \$5000 State of New Jersey	23	1.77		62,816.83	62,816.83
9037 I	Jan 8	Accd int fr 11/1/32 to 1/7/32 on \$3000 City of St Paul Minn	23	24.75		62,792.08	62,792.08
9037 I	Jan 11	Div 125 shs Piedmont & Northern Ry Co	6		156.25	62,948.33	62,948.33
9037 I	Jan 11	Accd int fr 1/1/32 to 1/11/32 on \$8000 State of New Jersey	23	8.80			
		Bought \$8000 State of New Jersey 4% due 7/1/50 91 net & int	27	7,280.00		55,659.44	55,659.44
9037 I	Jan 13	Accd int fr 12/15/31 to 1/12/32 on \$10000 City of Buffalo	24	54.00			
		Bt \$10000 City of Buffalo Regd 4 1/2% due 6/15/64 4.70 basis net & int	27	15,469.58		40,135.86	40,135.86
9037 I	Jan 15	Int \$2000 City of Troy N Y	8		40.00		
		Int \$3000 "	8		60.00		
		Int \$3000 "	8		60.00		
		Int \$2000 "	8		40.00		
		Int \$2000 "	8		40.00	40,375.86	40,375.86
9037 I	Jan 23	Charges incurred in the coll of \$562.50 cpns of the City of Trenton N J	22	.22			
		Charges incurred in the coll of \$2380 cpns of the City of Phila	22	.50		40,375.14	40,375.14
9037 I	Jan 28	Div 14000 shs British Amer Tobacco Co Ltd final at 8d Interim at 10d	3		3,617.25	43,992.39	43,992.39
9037 I	Jan 30	Charges incurred in the coll of \$270 cpns of the City of Dubuque Ia	22	.25		43,992.14	43,992.14
9037 I	Feb 1	Int \$25000 City of Detroit Mich	7		562.50		
		Int \$30000 City of Trenton N J	7		637.50	45,192.14	45,192.14
9037 I	Feb 1	Div 1875 shs American Machine & Filry Co Comm	6		656.25	45,848.39	45,848.39
9037 I	Feb 1	Paid Cordella Biddle Robertson gen gdn Anthony Newton Duke For support maintenance & education of Anthony Newton Duke	27	2,500.00			
		Charges incurred in the coll of \$3566.25 cpns of the State of N J	22	.31		43,348.08	43,348.08
9037 I	Feb 8	Charges incurred in the coll of \$637.50 cpns of the City of Trenton	22	.22		43,347.86	43,347.86

Balance Forwarded to Page 49

Petitioners' Exhibit 3.

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1930						
	Dec 31	Balance Forwarded		613,261.07	599,986.27	13,274.80	
	1931						
038 P.	Jan 16	Sold 6M Bd of Education of City School Dist of City of Cleve Ohio Bldg 6s due 6/1/38 dated 6/1/20 4.10 basis less $\frac{3}{4}$ net & int			6,673.91		
"		Sold 10M Hud Co N J Newark Turnpike Imp $4\frac{1}{2}$ s due 7/1/32 $3\frac{3}{4}$ basis less $\frac{3}{4}$ net & int			10,139.01		
"		Sold 17M Hud Co N J Hospital for Insane $4\frac{1}{2}$ s due 7/1/32 $3\frac{3}{4}$ basis less $\frac{3}{4}$ net & int			17,236.32		
"		Sold 1M Hud Co N J Rd Bonds $4\frac{1}{2}$ s due 7/1/32 $3\frac{3}{4}$ basis less $\frac{3}{4}$ net & int			1,013.90		
"		Sold 25M Hud Co N J Jail Bonds $4\frac{1}{2}$ s due 7/1/32 $3\frac{3}{4}$ basis less $\frac{3}{4}$ net & int			25,347.53	47,135.87	
038 P	20	Trsf'd fr inc as above per proof of cash					
		As of 11/15/26 cost of 100M State of N J			101,596.44		
		As of 11/17/26 cost of 20M City of Det			20,500.62		
		As of 11/23/26 cost of 50M State of N J			50,750.00		
		As of 7/26/29 cost of 8M State of Tenn			7,959.82		
		As of 11/29/26 cost of 76M Hud Co N J			76,782.02		
		As of 8/27/29 11M City of Cleve			11,000.00		
		As of 7/29/29 50M Hud Co N J			50,187.50		
		11/30/26 cost of Fed Stamps			1.00		
		As of 10/1/29 cost of 540 shrs Duke Pr Co			54,000.00		
		Trsf'd to inc a/c as above per proof of cash					
		As of 2/27/26 rec'd fr Est A B Duke		250,000.00			
		As of 4/21/26 cost of Fed Stamps		.84			
		As of 4/27/26 sale 250 Amer Mach & Fdy Rts		112.50			
		As of 5/15/26 cost of Stamps		2.84			
		As of 1/5/29 sale 1000 Texas Corp Rts		4,131.00			
		1800 "		6,956.70			
		200 "		838.80			
		300 "		1,220.70			
		9/5/29 sale 100 Duke Pr Co		2,049.80			
		81 "		1,888.05			
		900 Duke Pr Co		19,698.90			
		1800 "		39,833.90			
		200 "		4,187.10			
		300 "		5,861.90			
		9/6/29 sale 600 "		10,948.80			
		9/11/29 sale 1200 "		21,447.60			
		9/16/29 sale 300 "		6,599.40			
		6/12/28 sale 31 Gty Tr Co Rts		4,339.79		39,795.35	
38		Pd City Bk Farmers Tr Co being comm for receiving 13,844,608.23 & paying out \$12,798.62 of princ per Dec Ord of Ct 1/2/31		38,041.06			
		Pd T B C & M being prop shr of costs & disb as taxed per Dec dated 1/2/31		30.52		1,123.77	
38 P	May 26	Warrant for 2/8 sh Aluminum Ltd cash transaction only 29 net			7.25	1,131.02	
38 P	May 28	Cost of ins \$7.50 and postage 17¢ 75M City of Phil $4\frac{1}{2}$ s		7.67		1,123.35	

Petitioners' Exhibit 3.

142

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	May 28	Balance Brought Forward				1,123.35	1,123.35
9038 P	June 1	To cover registered mail on 75M City of Phil sent out permanent bonds		1.76		1,121.59	1,121.59
9038 P	June 10	Cost of fed stamps for tfr of 64 rts Aluminum Ltd A		.16		1,121.43	1,121.43
9038 P	June 12	Sold a warrant for 8 2/8 shares Aluminum Ltd at 17 less bkg & tax 2 rts at 2 net less tax			138.91	1,260.34	1,260.34
9038 P	Jul 1	Red 6M State of Montana			6,000.00	7,260.34	7,260.34
9038 P	Jul 3	Red 1M County of Hudson N J 4 1/2s			1,000.00		
"		Red 3M County of Hudson N J 4 1/2s			3,000.00		
"		Sold 12M County of Duval of Florida Spl 5s due 4/1/50 98 1/4 net and int			11,790.00	23,050.34	23,050.34
9038 P	Jul 6	Bt 7M City of Phil 4s due 2/1/53 3.85 basis less 1/2 net & int		7,144.01			
"		Bt 2M City of Phil 4s due 7/1/80/50 3.85 basis less 1/2 net and int		2,037.64		13,868.69	13,868.69
9038 P	Jul 21	Bt 13M Erie County N Y 3 3/4s due 7/1/52 101 net and inte		13,130.00		738.69	738.69
9038 P	Sep 14	Warrant 8 shares Aluminum Ltd 12 less bkge and tax per warrant			94.84	833.53	833.53
9038 P	Dec 17	Sold 100 sbs American Cigar Co Com			7,996.00	8,829.53	8,829.53
	1932						
9038 P	Jan 4	Bt \$5000 Westchester Co N Y 4 1/4s due 6/1/64 4.50% basis net & int		4,787.71		4,041.82	4,041.82
9038 P	Jan 5	Bt \$3000 Westchester Co of N Y 4 1/4s due 6/1/60 4.50 basis net & int		2,880.31		1,161.51	1,161.51
9038 P	Jul 7	Redemp of 13000.00 Hudson Co N J Road Bonds 4 1/2s due 7/1/32 13000.00 Less coll chge & fed tax 6.52			12,993.48	14,154.99	14,154.99
9038 P	Jul 14	Bt \$7000 State of N J 4 1/2s due 7/1/67 4.35 basis less 1/2 net & int		7,152.67		7,002.32	7,002.32
9038 P	Aug 1	Bt 6M City of St Paul Minn 4 1/2s due 7/1/46 W I 4.35 basis less 1/4 net & int		6,078.02		924.30	924.30

Fwd to Sheet 9

Petitioners' Exhibit 4.

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1930						
	Dec 23	Balance Forwarded		818,223.89	826,681.48	8,457.59	8,457.59
0038 I	Dec 24	Int to 11/26/30 Inc			208.80	8,666.39	8,666.39
0038 I	30	Coll charges ded on cpns aggregating \$1100 of Co of Westchester		.46		8,665.93	8,665.93
0038 I	31	Divd 31 Gty Tr Co N Y	6		155.00	8,820.93	8,820.93
0038 I		Divd 125 Durham & So Ry	6		312.50	9,133.43	9,133.43
0038 I	Jan 2	12M Wash Md	7		270.00		
"		50M State of W Va	7		1,000.00		
"		59M State of Tenn	7		1,327.50		
"		6M State of No Car	7		135.00		
"		25M State of No Car	7		562.50		
"		21M State of N J	7		446.25		
"		150M State of N J	7		3,187.50		
"		6M State of Montana	7		165.00		
"		14M Hud Co N J	7		315.00		
"		1M Hud Co N J	7		222.50		
"		1M "	7		222.50		
"		10M Hud Co N J	7		225.00		
"		25M Hud Co N J	7		562.50		
"		3M "	7		67.50		
"		4M "	7		90.00		
"		17M "	7		382.50		
"		1M "	7		222.50		
"		12M Ea Bay Municipal Utility Dist of Cal	7		300.00		
"		10M Co of Sumter S C	7		250.00		
"		12M Co of Spokane	7		285.00		
"		10M City of Trenton	7		225.00		
"		9M City of Richmond Va	7		202.50		
"		3M City of Richmond Va	7		67.50		
"		38M City of Phila	7		807.50		
"		19M City of Phila	7		403.75		
"		25M City of Milw	7		562.50		
"		33M City of Milw	7		742.50		
"		23M City of Memphis	7		575.00		
"		1M City of Memphis	7		23.75		
"		1M City of Memphis	7		25.00		
"		20M City of Kansas City	7		450.00		
"		10M City of Kansas City	7		225.00		
"		12M City of Greenville S C	7		270.00		
"		12M City of Dubuque Iowa	7		270.00		
"		11M City of Det Mich	7		247.50		
"		25M City of Detroit Mich	7		531.25		
"		1M City of Det Mich	7		22.50		
"		2M City of Chic Ill	7		40.00	24,463.43	24,463.43
0038 I		11657 62/100 shrs Duke Pr Co	6		14,571.25	39,034.68	39,034.68
0038 I		1620 3/5 shrs U S Tobacco Co Com	6		1,629.00	40,663.68	40,663.68
0038 I		Divd 997 Cannon Mills Co Com	6		398.80	41,062.48	41,062.48
0038 I		Divd 3300 Texas Corp	6		2,475.00	43,537.48	

Forwarded

Petitioners' Exhibit 4.

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931	Balance Forwarded		818,224.35	861,761.83	43,537.48	43,537.48
9038 I	Jan 2	Divd 603 Aluminum Co of Amer Pfd	6		904.50		
"		Divd 25 Erwin Cotton Mills	6		75.00	44,516.98	44,516.98
9038 I		Divd 594 Lehigh Valley Coal Corp Pfd	6		445.50		
"		1258 shrs Durham Hold Corp Com	6		1,258.00		
		Divd for Oct	6		1,258.00	47,478.48	47,478.48
9038 I	12	125 shrs Piedmont & No Ry Co	6		156.25	47,634.73	47,634.73
9038 I	15	1M City of Troy N Y	8		20.00		
"		1M City of Troy N Y	8		20.00		
"		1M City of Troy N Y	8		20.00		
"		1M City of Troy N Y	8		20.00		
"		1M City of Troy N Y	8		20.00		
"		1M City of Troy N Y	8		20.00		
"		1M City of Troy N Y	8		20.00		
"		1M City of Troy N Y	8		20.00		
"		1M "	8		20.00		
"		1M "	8		20.00		
"		1M "	8		20.00		
"		1M "	8		20.00	47,874.73	47,874.73
9038 I	16	Acce int 12/1 to 1/16 on 6M Bd of Edu					
"		City of Cleveland Ohio	7		45.00		
"		Acce int 1/1 to 1/16 on 10M Hud Co N J	7		18.75		
"		Acce int 1/1 to 1/16 on 17M Hud Co N J	7		31.88		
"		Acce int 1/1 to 1/16 on 1M Hud Co N J	7		1.88		
"		Acce int 1/1 to 1/16 on 25M Hud Co N J	7		46.88	48,019.12	48,019.12
9038 I	20	Trsf'd fr princ a/c as above per proof of cash					
		As of 2/8/26 recd fr Est of A B Duke	12		250,000.00		
		As of 4/21/26 cost of Fed Stamps			.84		
		4/27/26 sale 250 Amer Mach & Fdy Rts			112.50		
		5/15/26 cost of Stamps			2.84		
		1/5/29 sale 1000 Texas Corp Rts			4,131.00		
		1800 Texas Corp			6,956.70		
		200 "			838.80		
		300 "			1,220.70		
		9/5/29 sale 100 Duke Pr Rts	12		2,049.80		
		81 Duke Pr Rts			1,888.05		
		900 Duke Pr Rts			19,608.20		
		1800 "			39,833.90		
		200 "			4,187.10		
		300 "			5,861.90		
		9/6/29 sale 600 "			10,948.80		
		9/11/29 sale 1200 "			21,447.00		
		9/16/29 sale 300 "			6,599.40		
		6/12/28 sale 31 Gty Tr Co Rts			4,339.70		
"		Trsf'd fr princ a/c as above per proof of cash					
		As of 11/15/26 cost of 100M State of N J		101,593.44			
		11/17/26 cost of 20M City of Det	27	20,500.62			
		11/23/26 cost of \$50M State of N J		50,750.00			
		11/29/26 cost of 76M Hud Co		76,782.02		178,507.06	

Petitioners' Exhibit 4.

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	Jan 20	Balance Brought Forward				178,507.96	178,507.96
038 I	Jan 20	Continued					
		As of 7/26/29 cost of 8M State of Tenn		7,959.82			
		As of 7/29/29 cost of 50M Hud Co		50,187.50			
		As of 8/27/29 cost of 11M City of Cleve	27	11,000.00			
		As of 11/30/26 cost of Fed Stamps		1.00			
		As of 10/1/29 cost of 540 shrs Duke Pr Co		54,000.00		55,359.64	55,359.64
038 I	26	Coll chg ded on \$807.50 City of Phila cpns	23	.25		55,359.39	55,359.39
038 I	27	Coll chg ded on \$3187.50 State of N J	23	.40		55,358.99	55,358.99
038 I	28	Coll chg ded on \$1710 Co of Hudson N J	23	.28		55,358.71	55,358.71
038 I		Coll chg ded on \$270 City of Dubuque	23	.70		55,358.01	55,358.01
038 I	28	Divd 14000 British Amer Tob Co Ltd					
		Final £1106 13 4					
		Interim 583 6 8 at 4 854073	3		8,494.62	63,852.63	63,852.63
038 I	31	Pd Cordelia Biddle Robertson gen gdn Angier					
		B Duke amt due support maintenance & education Angier B Duke	27	2,500.00		61,352.63	61,352.63
038 I		Divd 135 Durham & So Ry Co	6		1,250.00	62,602.63	62,602.63
038 I	Feb 2	30M City of Trenton N J	7		637.50		
"		65M City of Detroit	7		1,462.50		
"		25M City of Detroit Mich	7		531.25		
"		1M City of Detroit	7		21.25		
"		14M City of Detroit	7		297.50		
						65,552.63	65,552.63
038 I		1875 shrs Amer Machine & Fdry Com	6		656.25	66,208.88	66,208.88
038 I	6	Divd 728 Erwin Cotton Mills Co Com	6		1,092.00	67,300.88	67,300.88
038 I	16	8M State of Tenn	7		180.00	67,480.88	67,480.88
038 I	27	Coll chg ded on \$637.50 City of Trenton cpns	23	.22		67,480.66	67,480.66
038 I	Mar 2	5M State of Mo	7		106.25		
		12M State of Ill	7		480.00		
"		3M Co of Guilford N C	7		78.75		
"		3M "	7		78.75		
"		3M City of Toledo	7		60.00		
"		2M "	7		40.00		
"		1M "	7		22.50		
"		2M "	7		40.00		
"		3M "	7		60.00		
"		5M "	7		100.00		
"		5M City of Oklahoma City	7		125.00		
"		10M "	7		250.00		
"		25M City of Nashville Tenn	7		625.00		
"		3M City of Minn	7		60.00		
"		19M City of Minn	7		380.00		
"		2M City of Minn	7		40.00		
"		37M City of Minn	7		940.00		
"		6M City of Los Angeles	7		142.50		
"		20M City of Balt Md	7		400.00	71,509.41	

Petitioners' Exhibit 4.

146

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	Mar 2	Balance Brought Forward				71,509.41	71,509.41
9038 I	Mar 2	Divd 1500 Liggett & Myers Tob Co Com	6		1,500.00		
"	"	Extra divd	6		1,500.00		
"	"	Divd 1100 Liggett & Myers Tob Co Com B	6		1,100.00		
"	"	Extra divd	6		1,100.00	76,709.41	76,709.41
9038 I	Mar 13	Recd from Estate of Angler B Duke being 6 months int to Feb 28 1931 on 55M N Y City 4 1/4s held by N Y State Tax Comm	8		584.38	77,293.79	77,293.79
9038 I	Mar 16	Divd 87 Stand Oil Co of Ind Cap	6		43.50	77,337.29	77,337.29
9038 I	Mar 17	Paid Coll Int Rev 1930 Income Tax on Undistributed Income 1st Quarterly Installment	27	3,385.92		73,951.37	73,951.37
9038 I	Mar 17	Accd int fr 2/27/31 to 3/17/31 75M City of Phil Pa 4 1/4s due 2/27/81/51	23	159.37			
		Bought 75M City of Phil Pa 4 1/4s due 2/27/81/51 103% net & int	27	77,531.25		3,739.25	3,739.25
9038 I	Mar 31	Divd 31 Guaranty Tr Co of N Y	6		155.00	3,584.25	3,584.25
9038 I	Mar 31	Divd 14000 British Amer Tobacco Co Ltd £ 583.68 at 4.85 1/2	3		2,832.10	752.15	752.15
9038 I	Apr 1	4M State of Oregon	7		90.00		
"	"	2M Hudson & Manhattan RR Co	1		50.00		
"	"	5M State of Oregon	7		112.50		
"	"	3M "	7		67.50		
"	"	25M County of Erie N Y	8		531.25		
"	"	12M County of Duval	7		300.00		
"	"	25M City of Yonkers N Y	8		562.50		
"	"	45M City of St Louis Mo	7		956.25	1,917.85	1,917.85
9038 I	Apr 1	Divd 125 Durham & South Ry Co	6		312.50	2,230.35	2,230.35
9038 I	Apr 1	1M City of Asheville N C	7		23.75		
"	"	5M City of Asheville N C	7		118.75		
"	"	5M "	7		118.75	2,491.00	2,491.00
9038 I	Apr 1	Divd 3300 Texas Corp	6		2,475.00		
"	"	11657 62/100 Duke Power Co	6		14,571.25		
"	"	Divd 594 Lehigh Valley Coal Corp Pfd	6		445.50		
"	"	Divd 1258 Durham Holding Corp	6		1,258.00	21,241.35	21,241.35
9038 I	Apr 1	Divd 997 Cannon Mills Co Common	6		398.80		
"	"	1M City of Asheville N C	7		23.75		
"	"	1629 3/5 United States Tobacco Co Com	6		1,791.90		
"	"	Divd 603 Aluminum Co of Amer	6		904.50	24,360.30	24,360.30
9038 I	Apr 3	Cost of ins 5.25 and postage 60¢ on talons No. 2 detached fr 14M British Amer Tob Co Ltd	22	5.85		24,354.45	

Forwarded Sheet 41

Petitioners' Exhibit 4.

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	Apr 3	Balance Brought Forward				24,354.45	24,354.45
0038 I	Apr 13	Divd 125 Piedmont & Northern Rwy Co Cap	6		156.25	24,510.70	24,510.70
0038 I	Apr 13	Paid Dept of Taxation & Finance 1930 New York State Income Tax on Undistributed Income	27	5,211.88		19,298.82	19,298.82
0038 I	Apr 15	12M City of N Y	8		255.00	19,553.82	19,553.82
0038 I	Apr 24	Charges incurred in collection of \$531.25 coupons of Co of Erie	23	.23		19,553.59	19,553.59
0038 I	Apr 24	Charges incurred in collection of \$562.50 coupons of City of Yonkers	24	.23		19,553.36	19,553.36
0038 I	Apr 30	Paid Cordella Biddle Robertson gen gdn Angler B Duke	7		67.50		
			27	2,500.00		17,053.36	17,053.36
0038 I	Apr 30	12M County of Georgetown S C	7		390.00	17,413.36	17,413.36
0038 I	May 1	9M Town of Kearny N J	7		202.50		
"		12M Washington Md	7		270.00		
"		3M Town of Kearny N J	7		67.50		
"		10M City of Jersey City N J	7		225.00		
"		7M Mayor & Council of Wilmington Del	7		157.50		
"		5M "	7		112.50		
"		6M Fed Land Bk of Houston	9		135.00		
"		6M Fed Ld Bk of New Orleans	9		135.00		
"		25M City of Norfolk Va	7		625.00		
"		4M City of New Rochelle N Y	8		80.00	19,423.36	19,423.36
0038 I	May 1	Divd 1875 Amer Machine & Foundry Co Com	6		656.25	20,079.61	20,079.61
0038 I	May 15	5M Hudson County N J	7		112.50		
"		5M "	7		112.50		
"		6M "	7		135.00		
"		4M "	7		90.00		
"		15M "	7		337.50		
"		8M "	7		180.00		
"		25M "	7		562.50		
"		10M City of Newark N J	7		212.50		
"		12M "	7		255.00		
"		18M "	7		382.50		
"		10M "	7		212.50		
"		47M City of Detroit Mich	7		940.00	23,612.11	23,612.11
0038 I	May 21	Divd 1750 Tob Sec Tr Co	3		332.50	23,944.61	

Forwarded Sheet 42

Petitioners' Exhibit 4.

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	May 27	Balance Brought Forward				23,044.61	23,044.61
9038 I	June 1	1M County of Westchester N Y	8		22.50		
"	"	3M " "	8		67.50		
"	"	6M " "	8		135.00		
"	"	12M County of Mecklenburg N C	7		285.00		
"	"	34M City of N Y	8		722.50		
"	"	16M City of N Y	8		340.00		
"	"	15M City of Detroit	7		318.75		
"	"	10M " "	7		212.50		
"	"	12M City of Detroit Mich	7		255.00		
"	"	27M Westchester County N Y	8		540.00		
"	"	6M Miami Conservancy District	7		165.00		
"	"	31M County of Westchester N Y	8		620.00	27,628.36	27,628.36
9038 I	June 1	Divd 1500 Liggett & Myers Tobacco Co Com	6		1,500.00		
"	"	1100 shs " "	6		1,100.00	30,228.36	30,228.36
9038 I	June 1	Int regd 1M City of Cleve Ohio	7		22.50		
"	"	Int regd 10M " "	7		225.00	30,475.86	30,475.86
9038 I	June 6	\$12,000 City of Balto Md	7		240.00	30,715.86	30,715.86
9038 I	June 12	Paid Coll of Int Rev 2nd qtr install 1930					
		Fed Inc Tax	27	3,385.91		27,329.95	27,329.95
9038 I	June 15	8M County of Fairfax Va	7		200.00		
"	"	4M City of Newark N J	7		85.00		
"	"	10M City of Newark N J	7		403.75		
"	"	20M City of Detroit Mich	7		450.00	28,468.70	28,468.70
9038 I	June 15	87 sh Std Oil Co of Indiana cap	6		43.50	28,512.20	28,512.20
9038 I	June 15	\$8000 City of Detroit Mich	7		170.00		
"	"	\$17000 City of Detroit Mich	7		361.25	29,043.45	29,043.45
9038 I	June 19	Int to 5/22/31 on bal	2		226.97	29,270.42	29,270.42
9038 I	June 25	Charges incurred coll \$1062.50 Newark N J coupons	23	.25			
"	"	Charges incurred coll \$562.50 County of Hudson coupons	23	.22			
"	"	Charges incurred coll \$620 Westchester County N Y coupons	24	.23		29,269.72	29,269.72
9038 I	June 25	Charges incurred in coll \$540 Westchester Co N Y coupons	24	.23		29,269.49	29,269.49

Forwarded Sheet 43.

Petitioners' Exhibit 4.

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	June 25	Balance Brought Forward				20,269.49	20,269.49
9038 I	June 30	12M Washington Md	7		270.00		
"		50M State of West Va	7		1,000.00		
"		20M State of Tenn	7		1,327.50		
"		6M State of Montana	7		165.00		
"		21M State of N J	7		446.25		
"		6M State of North Carolina	7		135.00		
"		25M "	7		562.50		
"		150M State of N J	7		3,187.50		
"		1M Hudson County N J	7		22.50		
"		10M County of Sumter S C	7		250.00		
"		12M County of Spokane Wash	7		285.00		
"		12M East Bay Municipal Utility, Dist of Calif			300.00		
"		3M Hudson County N J	7		67.50		
"		4M "	7		100.00		
"		1M "	7		22.50		
"		13M "	7		292.50		
"		1M "	7		22.50		
"		10M City of Trenton N J	7		225.00		
"		9M City of Richmond Va	7		202.50		
"		3M "	7		67.50		
"		38M City of Phil Pa	7		807.50		
"		19M City of Phil Pa	7		403.75		
"		Int 4 mos 2 days on \$75M City of Phil Pa	7		1,080.00		
"		25M City of Milw	7		562.50		
"		33M City of "	7		742.50		
"		23M City of Memphis Tenn	7		575.00		
"		1M "	7		23.75		
"		1M "	7		25.00		
"		20M City of Kansas City Miss	7		450.00		
"		10M "	7		225.00		
"		12M City of Greenville S C	7		270.00		
"		12M City of Dubuque Iowa	7		270.00		
"		41M City of Detroit Mich	7		247.50		
"		25M City of "	7		531.25		
"		1M "	7		22.50		
"		2M City of Chicago Ill	7		40.00	44,486.99	44,486.99
9038 I	Jun 30	Divd 31 Guaranty Tr Co of N Y	6		155.00	44,641.99	44,641.99
9038 I	Jun 30	Divd 14000 British Amer Tob Co Ltd	3		2,835.00	47,476.99	47,476.99
9038 I	Jul 1	Divd 594 Lehigh Valley Coal Corp Pfd	6		445.50	47,922.49	47,922.49
9038 I	Jul 1	1629 3/5 U S Tob Co Com	6		1,791.90		
"		11657 62/100 Duke Pr Co Cap	6		14,571.25		
"		1258 Durham Holding Corp Com	6		1,258.00	65,543.64	

Forwarded Sheet 44

Petitioners' Exhibit 4.

150

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	Jul 1	Balance Brought Forward				65,543.64	65,543.64
9038 I	Jul 1	3300 Texas Corp Cap	6		1,650.00	67,193.64	67,193.64
9038 I	Jul 1	603 Aluminum Co of America Pfd	6		904.50	68,098.14	68,098.14
9038 I	Jul 1	997 Cannon Mills Co Com	6		398.80	68,496.94	68,496.94
9038 I	Jul 1	125 Durham & South Ry Co	6		312.50	68,809.44	68,809.44
9038 I	Jul 2	Divd 25 Erwin Cotton Mills Co	6		75.00	68,884.44	68,884.44
9038 I	Jul 3	Aced int fr 4/1/31 to 7/3/31 12M County of Duval of Florida Spl			153.33	69,037.77	69,037.77
9038 I	Jul 6	Aced int fr 2/1/31 to 7/6/31 7M City of Phil 4s due 2/1/33	23	3.89			
"		Aced int fr 1/1/31 to 7/6/31 2M City of Phil 4s due 7/1/30/50	23	12.78		69,021.10	69,021.10
9038 I	Jul 13	125 Piedmont & North Rwy Co Cap	6		156.25	69,177.35	69,177.35
9038 I	Jul 15	1M City of Troy N Y	8		20.00		
"		1M "	8		20.00		
"		1M "	8		20.00		
"		1M "	8		20.00		
"		1M "	8		20.00		
"		1M "	8		20.00		
"		1M "	8		20.00		
"		1M "	8		20.00		
"		1M "	8		20.00		
"		1M "	8		20.00		
"		1M "	8		20.00		
"		1M "	8		20.00		
"		1M "	8		20.00		
"		1M "	8		20.00		
9038 I	Jul 17	Proceeds 7/1/31 coupons detached from 12M City of Dubuque 4 1/2s bd due 1/1/40 being entered on a collection basis as no funds are available at this time	23	270.00		69,147.35	69,147.35
9038 I	Jul 20	12M City of Dubuque Iowa \$270.00 Less post & ins .70	7		269.30	69,416.65	69,416.65
9038 I	Jul 21	Aced int fr 7/1 to 7/21/31 13M Erie County N Y 3 3/4s due 7/1/52	24	27.00		69,389.56	

Forwarded Sheet 45

Petitioners' Exhibit 4.

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	Jul 21	Balance Brought Forward				60,389.56	60,389.56
038 I	Jul 27	Charges incurred collection \$1887.50 coupons of City of Phil	23	.47			
"		Charges incurred collection \$488.75 coupons City of Newark N J	23	.49			
"		Charges incurred collection \$3187.50 coupons State of New Jersey	23	.35			
"		Charges incurred collection \$517.50 coupons County of Hudson	23	.22		60,388.03	60,388.03
038 I	Jul 31	Paid Cordelia Biddle Robertson Gen Gdn Angler B Duke	27	2,500.00		66,888.03	60,888.03
038 I	Aug 1	30M City of Trenton N J	7		637.50		
"		65M City of Detroit Michigan	7		1,462.50		
"		14M "	7		297.50		
"		25M "	7		531.25		
"		1M "	7		21.25	60,838.03	60,838.03
038 I	Aug 1	1875 American Machine & Fdry Co Com	6		656.25	70,494.28	70,494.28
038 I	Aug 17	Accd int fr 6/1 to 8/11/31 17M City of Newark 4s due 6/1/56	23	132.22			
		Bt 17M City of Newark N J 4s due 6/1/56 3.85 basis net and int		17,404.40		52,957.06	52,957.06
038 I	Aug 12	Accd int fr 6/1/31 to 8/12/31 \$51M City of Newark N J 4s due 6/1/66 67.70	23	402.33			
		Bt 51M City of Newark N J 4s due 6M at 6/1/66 25M 6/1/67 20M 6/1/70	29	52,241.06		313.67	313.67
038 I	Aug 15	8M State of Tenn	7		180.00	493.67	493.67
038 I	Aug 20	Charges incurred coll \$637.50 coupons of City of Trenton N J	23	.22		493.45	493.45
038 I	Sep 1	5M State of Missouri	7		100.25		
"		3M County of Guilford N C	7		78.75		
"		3M "	7		78.75		
"		3M City of Toledo Ohio	7		60.00		
"		2M "	7		40.00		
"		1M "	7		22.50		
"		2M "	7		40.00		
"		3M "	7		60.00		
"		5M "	7		100.00		
"		5M City of Oklahoma	7		125.00	1,204.70	

Forwarded Sheet 46

Petitioners' Exhibit 4.

152

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	Sep 1	Balance Brought Forward				1,204.70	1,204.70
9038 I	Sep 1	10M City of Oklahoma	7		250.00		
"		25M City of Nashville Tenn	7		625.00		
"		3M City of Minneapolis Minn	7		60.00		
"		19M "	7		380.00		
"		2M "	7		40.00		
"		4M "	7		940.00		
"		6M City of Los Angeles Calif	7		142.50		
"		20M City of Balt Md	7		400.00	4,042.20	4,042.20
9038 I	Sep 1	Divd 1500 Liggett & Myers Tobacco Co Com	6		1,500.00		
"		Divd 1100 "	6		1,100.00	8,642.20	6,642.20
9038 I	Sep 5	Reed from Estate of Angler B Duke being 1/4 sh proceeds sale 2 tickets Natl Mens Championship West Side Tennis Club	12		5.00		
"		Reed from Estate of Angler B Duke being 6 mos Int ending Aug 31 1931 on 110M N Y C 4 1/2 % bonds held by N Y State Tax Commission	8		584.38	7,231.58	7,231.58
9038 I	Sep 12	Paid Coll Int Rev 3rd quarterly installment 1930 Fed Inc Tax on undistributed income	27	3,385.01		3,845.67	3,845.67
9038 I	Sep 15	87 Stand Oil Co of Ind	6		21.75	3,867.42	3,867.42
9038 I	Sep 16	Charges coll \$400 coupons City of Balt	23	.40		3,867.02	3,867.02
9038 I	Sep 30	Divd 31 Guaranty Tr Co of N Y	6		155.00	4,022.02	4,022.02
9038 I	Sep 30	140M British Amer Tob Co Ltd	3		2,362.50	6,384.52	6,384.52
9038 I	Oct 1	4M State of Oregon	7		90.00		
		5M State of "	7		112.50		
		3M "	7		67.50		
		2M Hud & Man R R Co	1		50.00		
		25M County of Erie N Y	8		531.25		
		25M City of Yonkers N Y	8		562.50		
		45M City of St. Louis Mo	7		956.25		
		12M City of Balt Md	7		240.00	8,994.52	8,994.52
9038 I	Oct 1	1629 3/5 shrs United States Tob Co	6		1,791.90	10,786.42	10,786.42
9038 I	Oct 1	3300 Shrs Tex Corp	6		1,650.00		
		11657 & 62 100 shrs Duke Pr Co	6		14,571.25	27,007.67	27,007.67
9038 I	Oct 1	907 shrs Cannon MI Ls Co	6		398.80		
		Divd 594 Lehigh Valley Coal Corp Pfd	6		445.50	27,851.97	27,851.97
9038 I	Oct 1	Divd 125 Durham and So Ry Co Fidelity Bk of Durham	6		312.50	28,164.47	

Forwarded to Sheet 47

Petitioners' Exhibit 4.

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	Oct 1	Brought Forward				28,164.47	28,164.47
038 I	Oct 1	603 shrs Aluminum Co of Amer	6		904.50	29,068.97	29,068.97
038 I	Oct 2	1258 shrs Durham Holding Corp	6		1,258.00	30,326.97	30,326.97
038 I	Oct 13	125 shrs Piedmont & Northern Ry Co	6		156.25	30,483.22	30,483.22
038 I	Oct 13	Charges incurred in coll of \$531.25 cpns of Co of Erie	24	22		30,483.00	30,483.00
038 I	Oct 15	12M City of N Y	8		255.00	30,738.00	30,738.00
038 I	Oct 22	Charges incurred in coll of \$562.50 cpns of the City of Yonkers N Y	22	22		30,737.78	30,737.78
038 U	Oct 31	Paid Cordella Biddle Robertson Genl Gdn Angler B Duke	27	2,500.00		28,237.78	28,237.78
038 I	Oct 31	12M County of Georgetown S C	7		360.00	28,597.78	28,597.78
038 I	Nov 2	10M City of Jersey City N J	7		225.00		
		4M City of New Rochelle N Y	8		80.00		
		25M City of Norfolk Va	7		625.00		
		6M Fed Land Bk of New Orleans Fed Farm Loan	9		135.00		
		6M Fed Land Bk of Houston	9		135.00		
		5M Mayor & Council of Wilmington Del	7		112.50		
		7M Mayor & Council of Wilmington Del	7		157.50		
		3M Town of Kearny N J	7		67.50		
		9M Town of Kearny N J	7		202.50		
		12M Washington Md	7		270.00		
						30,607.78	30,607.78
038 I	Nov 2	1875 shrs Amer Machine & Fdry Co	6		656.25	31,264.03	31,264.03
038 I	Nov 11	Recd from Est of Angler B Duke refund of interest assessed by & paid to Coll Int Rev on Deficiency Estate Tax 1928					
		61895.40					
		Accd int on same				11426.06	
						73321.46	
		Less amt paid Carlin & Rover for collecting same				14664.29	
						58657.17	
		¼th thereof due inc of this tr				14664.30	
038 I	Nov 13	Bt 32M City of Newark N J 4s due June 1/58	12		14,664.30	45,928.33	45,928.33
		4¼ basis less ¼ net & int	27	30,653.38			
		Accd int from June 1/31 to Nov 13/31		576.00		14,398.95	14,608.95
038 I	Nov 14	728 shrs Erwin Cotton Mills Co	6		1,092.00	15,790.95	15,790.95
038 I	Nov 16	47M City of Detroit Mich	7		940.00		
		10M City of Newark N J	7		212.50		
		18M City of Newark N J	7		382.50		
		12M City of "	7		255.00		
		10M "	7		212.50		
		6M Hudson County N J	7		135.00		
		15M Hudson County N J	7		337.50		
		4M Hudson County N J	7		60.00	18,355.95	

Petitioners' Exhibit 4.

154

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
9038 I	Nov 16	Brought Forward				18,355.95	18,355.95
9038 K	Nov 16	25M Hudson County N J	7		562.50		
		8M "	7		180.00		
		5M "	7		112.50		
		5M "	7		112.50	19,323.45	19,323.45
9038 I	Nov 28	Charges incurred in the collection of \$1062.50 coupons of the City of Newark N J	23	.25			
		Charges incurred in the collection of \$1125 coupons of the County of Hudson	23	.25		19,322.95	19,322.95
9038 I	Dec 1	27M Westchester Co N Y	8		540.00		
		6M Miami Conservancy District	7		165.00		
		3M County of Westchester N Y	8		67.50		
		31M "	8		620.00		
		1M County of Westchester N Y	8		25.50		
		6M "	8		135.00		
		12M County of Mecklenburg N C	7		285.00		
		34M City of N Y	8		722.50		
		16M City of N Y	8		340.00		
		20M City of Newark N J	7		400.00		
		25M "	7		500.00		
		6M City of Newark N J	7		120.00		
		17M City of Newark N J	7		340.00		
		15M City of Detroit	7		318.75		
		10M City of Detroit	7		212.50		
		12M City of Detroit Mich	7		255.00	24,366.70	24,366.70
9038 I	Dec 1	Divd 1500 Liggett & Myers Tob Co Com	6		1,500.00		
		32M City of Newark N J	7		640.00	26,506.70	26,506.70
9038 I	Dec 1	Divd 1100 Liggett & Myers Tobacco Co	6		1,100.00	27,606.70	27,606.70
9038 I	Dec 2	10M City of Cleveland Ohio	7		225.00		
		1M City of "	7		22.50	27,854.20	27,854.20
9038 I	Dec 9	Charges incurred in coll of \$640' cpns of City of Newark	23	.22			
		Charges incurred in coll of \$540 cpns of County of Westchester	24	.22			
		Charges incurred in coll of \$620 cpns of Co of Westchester	24	.22			
		Charges incurred in coll of \$1360 cpns of City of Newark N J	22	.26		27,853.28	27,853.28
9038 I	Dec 12	Paid Coll of Int Rev final installment 1930					
		Fed Income Tax on Undistributed Income	27	3,385.01		24,467.37	24,467.37
9038 I	Dec 15	8M County of Fairfax Va	7		200.00		
		4M City of Newark N J	7		85.00		
		19M City of Newark N J	7		403.75		
		8M City of Detroit Mich	7		170.00		
		17M City of Detroit Mich	7		361.25		
		20M City of Detroit Mich	7		450.00	26,137.37	26,137.37
9038 I	Dec 15	87 shrs Std Oil Co of Indiana	6		21.75	26,159.12	

Balance Forwarded to Page 49

Petitioners' Exhibit 4.

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1931						
	Dec 15	Balance Brought Forward					26,150.12
038 I	Dec 16	Dividend on 1750 Tobacco Sec Tr Co Ltd deferred reg shs	3		117.25	26,276.37	26,276.37
038 I	Dec 16	Dividend on 1750 Tobacco Sec Tr Co Ltd ord reg shs Amer Dep Rec	3		560.00	26,836.37	26,836.37
038 I	Dec 18	Interest to November 22 1931 on balance	2		302.17	27,138.54	27,138.54
038 I	Dec 26	Div 728 shs Erwin Cotton Mills Co	6		1,092.00	28,230.54	28,230.54
038 I	Dec 31	Div 31 shs Guaranty Trust Co of N Y	6		155.00	28,385.54	28,385.54
	1932						
038 I	Jan 2	Int \$12000 Washington Md Suburban Sanitary Dist Ser F	7		270.00		
		Int \$50000 State of West Virginia	7		1,000.00		
		Int \$59000 State of Tennessee Highway Notes	7		1,327.50		
		Int \$6000 State of No Carolina	7		135.00		
		Int \$25000 State of No Carolina	7		562.50		
		Int \$150000 State of N J State Hwy Fd A/C of 1932 Ser F Road	7		3,187.50		
		Int \$21000 State of N J State Hwy Fund Bdge Ser E	7		446.25		
		Int \$12000 East Bay Municipal Utility Dist of Calif Water	7		300.00		
		Int \$1000 Hudson Co N J Newark Turnpike Imp	7		22.50		
		Int \$1000 Hudson Co N J Newark Turnpike Imp	7		22.50		
		Int \$4000 Hudson Co N J Hospital for Insane	7		90.00		
		Int \$13000 Hudson County N J Road	7		292.50		
		Int \$10000 County of Sumter S C	7		250.00		
		Int \$12000 County of Spokane Wash	7		285.00		
		Int \$10000 City of Trenton N J	7		225.00		
		Int \$3000 City of Richmond Va	7		67.50		
		Int \$9000 City of Richmond Va	7		202.50		
		Int \$7000 City of Phila	7		140.00		
		Int \$2000 City of Phila	7		40.00		
		Int \$38000 City of Phila Pa	7		807.50		
		Int \$19000 City of Phila Pa	7		403.75		
		Int \$75000 "	7		1,593.75		
		Int \$25000 City of Milw	7		562.50		
		Int \$33000 City of Milw Wise	7		742.50		
		Int \$23000 City of Memphis Tenn	7		575.00		
		Int \$1000 City of "	7		23.75		
		Int \$1000 "	7		25.00		
		Int \$20000 City of Kansas City Mo	7		450.00		
		Int \$10000 "	7		225.00		
		Int \$12000 City of Greenville S C	7		270.00		
		Int \$12000 City of Dubuque Iowa	7		270.00		
		Int \$11000 City of Detroit Mich	7		247.50		
		Int \$25000 City of "	7		531.25		
		Int \$1000 City of "	7		22.50		
		Int \$2000 City of Chic Ill	7		40.00	44,041.79	44,041.79
038 I	Jan. 2	11637 & 62/100 shs Duke Power Co	6		14,571.25		
		1929 & 3/5 shs United States Tobacco Co Com	6		1,791.90	60,404.94	

Balance Forwarded to Page 50

Petitioners' Exhibit 4.

15

Trust No.	Date	ITEMS	Voucher Number	Debit	Credit	Balance	Previous Balance
	1932						
	Jan 2	Brought Forward				60,404.94	60,404.94
9038 I	Jan 2	Div 3300 shs Texas Corp	6		1,650.00	62,054.94	62,054.94
9038 I	Jan 2	Div 125 shs Durham & Southern RY Co	6		312.50	62,367.44	62,367.44
9038 I	Jan 2	Div 603 shs Aluminum Co of Amer	6		904.50		
		Div 997 shs Cannon Mills Co Com	6		398.80	63,670.74	63,670.74
9038 I	Jan 2	Div 25 shs Erwin Cotton Mills Co	6		75.00	63,745.74	63,745.74
9038 I	Jan 4	Div 1258 shs Durham Holding Corp Com	6		1,258.00	65,003.74	65,003.74
9038 I	Jan 4	Accd int fr 12/1/31 to 1/4/32 \$5000 Westchester Co N Y	24	19.48		64,984.26	64,984.26
9038 I	Jan 5	Accd int fr 12/1/31 to 1/5/32 \$3000 Westchester Co of N Y	24	12.04		64,972.22	64,972.22
9038 I	Jan 8	Accd int fr 8/1/31 to 1/7/32 on \$10000 City of Newark N J	23	238.34		64,733.88	64,733.88
9038 I	Jan 8	Bought \$10000 City of Newark N J 5 1/2s due 5M due 8/1/1950 5M due 8/1/1948 100 int & net	27	10,000.00		54,733.88	54,733.88
9038 I	Jan 11	Div 125 shs Piedmont & Northern Ry Co	6		156.25	54,890.13	54,890.13
9038 I	Jan 13	Accd int fr 12/15/31 to 1/12/32 on \$18000 City of Buffalo N Y	24	60.74			
		Bt \$18000 City of Buffalo N Y Registered 4 1/2% due 6/15/64 4.70 basis net & int	27	17,403.28		37,426.11	37,426.11
9038 I	Jan 15	Int \$1000 City of Troy N Y	8		20.00		
		Int \$1000 "	8		20.00		
		Int \$1000 "	8		20.00		
		Int \$1000 "	8		20.00		
		Int \$1000 "	8		20.00		
		Int \$1000 "	8		20.00		
		Int \$1000 "	8		20.00		
		Int \$1000 "	8		20.00		
		Int \$1000 "	8		20.00		
		Int \$1000 "	8		20.00		
		Int \$1000 "	8		20.00		
		Int \$1000 "	8		20.00		
		Int \$1000 "	8		20.00		
9038 I	Jan 23	Charges incurred in the coll of \$3187.50 cps of the State of N J	22	35			
		Charges incurred in the coll of \$807.50 cps of the City of Phila	22	23			
		Charges incurred in the coll of \$1593.75 cps of the City of Phila	22	27		37,665.26	37,665.26
9038 I	Jan 28	Div 14000 shs British Amer Tobacco Co Ltd final at 8D L 466 13 4 interim at 10D	3		3,617.25	41,282.51	41,282.51
9038 I	Jan 30	Charges incurred in the coll of \$270 cps of the City of Dubuque Ia	22	27		41,282.24	

Balance Forwarded to Page 51

Petitioners' Exhibit 5.

- 9037 Ttee. ANTHONY NEWTON DUKE u/w Angier B. Duke 469
- 7/25/30
P. Jacoby We today received approval of Messrs. Perkins, Allen and Halsted (Mr. Thorne being in Europe) of our suggestion to invest \$35,000 of the \$41,203.12 Income Cash balance of this Trust in suitable tax-free municipal bonds.
- 8/15/30
P. Jacoby We today received approval of J. C. Thorn of the purchase of \$15,000 City of Detroit 4 $\frac{1}{4}$ s, 1951, and \$20,000 City of Baltimore 4s, 1957.
- 11/12/30
Chapuis By signing and returning to us copy of our letter dated November 10th, Messrs. Thorne, Perkins, Allen and Halstead indicate their approval of investing the accumulated income balance of \$39,463.70 in the purchase of suitable tax-free municipal securities. 470
- 12/9/30
Chapuis By signing and returning to us copy of our letter dated December 5th, to William R. Perkins, Messrs. Thorn, Perkins, Allen and Halsted indicate their approval of the sale of 3/6th of a share of the Standard Oil Company of Indiana Capital stock.
- 1/14/31
Chapuis By signing and returning to us copy of our letter dated January 9th, to William R. Perkins, the former executors, Messrs. Allen, Thorn and Halsted approves of the sale of \$6,000 Par Value Board of Education of the City School District of the City of Cleveland, Ohio 6s due June 1st, 1932 and 1933 to raise in the neighborhood of \$60,000 in order to make payments ordered in the decree of the Surrogate's Court settling the account of the trustee. 471

Petitioners' Exhibit 5.

472 2/3/31
PJacoby

At a meeting of the OFFICERS' INVESTMENT COMMITTEE held today—Messrs. Cardozo, Anderson, Kilbreth, and Jacoby present—this account was reviewed.

2/5/31
PJacoby

INVESTMENT COMMITTEE reviewed this account.

2/10/31
RLGould

Under date of 2/9, W. R. Perkins acknowledged our letter of the 6th inst. and says: "The executors have no comments to make". Our letter of the 6th stated that our Committee had reviewed the securities and no changes were recommended.

473 3/10/31
FWFohey

By signing the copy of our letter of February 27th, Messrs. Perkins, Allen and Thorne approve of purchasing tax-free municipal issues with the accumulated income balance of approximately \$60,000 now on hand.

3/20/31
Chapuis

Copy of our letter March 18th to Mr. Perkins returned with Mr. Halsted's signature affixed thereto, signifying his approval of the purchase of \$74,000 City of Philadelphia, Pa. 4 $\frac{1}{4}$ s due 2/27/81/51 for the investment of the income cash on hand.

474 5/27/31
Chapuis

Our letter dated May 19th to Mr. W. R. Perkins returned with his signature and those of Messrs. Allen, Thorn and Halsted affixed thereto indicating their approval of the purchase of suitable tax free municipals to replace the \$6000 State of Montana 5 $\frac{1}{2}$ s due July 1, 1941 which have been called for payment July 1, 1931 at Par.

7/9/31
Chapuis

Copy of our letter dated July 6th to Mr. William R. Perkins returned with his and the

Petitioners' Exhibit 5.

other former executors' signatures affixed thereto indicating their approval of the purchase of tax frees for the reinvestment of the funds received through the sale of \$12,000 County of Duval 5s due 1950 which bonds we advised were sold at a price of 98 $\frac{1}{4}$ net. 475

7/9/31
FWFohey

By signing copy of our letter of 6/26, Messrs. Thorne, Perkins, Allen & Halsted approve of offering for redemption at a price not under par, \$12,000 Duval County Florida Special Tax School District #1 5% bonds. They indicate, however, that they do not desire the Trust to take a loss on the bonds. Inasmuch as our inventory price is 100, there will be no loss if the price of par or better is obtained. Orders were given to Mr. DiPosch with instructions of Mr. Anderson—Price of 98 $\frac{1}{4}$ was offered, which we accepted. 476

8/7/31
FWFohey

Letter dated 8/6, W. R. Perkins' secretary returns to us the duplicate copy of our communication of 8/5 with the signatures of Messrs. Allen and Halsted affixed thereto, as an indication that they approve of investing the accumulated income balance now on hand in suitable tax-free municipal securities. Mr. Perkins' secretary advises us that Messrs. Thorne and Perkins are out of the city at the present time which accounts for their not signing the duplicate. 477

Page 2

9037 Ttee. ANTHONY NEWTON DUKE u/w Angier B. Duke

8/20/31
RLGould

INVESTMENT COMMITTEE reviewed this trust and recommended that a check be made of

Petitioners' Exhibit 5.

478

the present condition of the less well-known municipal issues including particularly county bonds.

9/4/31
RLGould

Under date of September 3rd, Mr. W. R. Perkins has answered our inquiry of September 2nd, in reference to the sale of the warrants expiring Oct. 1 on the Aluminium, Ltd. stock. He says: "Replying to yours of the 2nd, do you consider yourselves authorized by the terms of the Trust to exercise these warrants and make that kind of an investment? While we think well of the future of the company and realize what we hope is the abnormal lowness of all things now, it is not an investment for trust funds." We are accordingly proceeding to sell the warrants.

479

9/10/31
RLGould

A list of municipal issues to which reference was made by the Investment Committee 8/20/31 was submitted to O W Anderson.

10/1/31
FWFohey

Letter dated 9/29, W R Perkins advises that he agrees with our opinion that it would be well to await developments before depositing City of Asheville NC bonds with Protective Committee.

480

10/16/31
Chapuis

Referring to our diary of August 7th, we have received Messrs. Thorne and Perkins approval by signing and returning copy of our letter dated August 15th.

11/9/31
FWFohey

By signing copy of our letter of 11/5, Messrs. Perkins, Thorne, Allen and Halsted approve of purchasing additional tax-free state or municipal securities with the accumulated income balance on hand.

Petitioners' Exhibit 5.

12/17/31
Chapuis

The American Tobacco Company has authorized Clark Dodge and Co. to purchase until December 21st the common stock at \$80 per share of the American Cigar Company. On December 12th we advised Mr. William R. Perkins of this and he returned letter with his signature and those of the other three former executors affixed thereto indicating that they favor accepting the offer for the 100 shares held in each account.

481

12/29/31
Chapuis

Copy of our letter dated December 21st to William R. Perkins returned with his signature and those of the other three former executors affixed thereto indicating their approval of the purchase of State or Municipal issues exempt from Federal Income tax with the funds made available through the sale of 100 shares of American Cigar Company Common and the income balance of \$24,476.87.

482

1/12/32
Jacoby

At a meeting of the OFFICERS' INVESTMENT COMMITTEE held today—Messrs. Hoyt, Knox, Anderson, Torrance and Jacoby present—this account was reviewed.

1/4/32
FWFohey

Under date of 12/28, Forrest Hyde advises that our letter of the 16th, addressed to W R Perkins, has been referred to him for reply. Our letter of which he speaks was a formal advice that the Lehigh Valley Coal Corp had omitted the dividend ordinarily payable 1/1 on the Preferred stock. In this connection, Mr. Hyde points out that the market value of this stock is approx. \$8 a shr and even though the dividend has been passed "We see no reason to liquidate it at these levels. If you know of any reason that it should be

483

Petitioners' Exhibit 5.

484

liquidated, I will appreciate your letting me know." In reply, under date 12/31, we are giving a brief resumé of the operations of the corporation and are advising that we quite agree with Mr. Perkins' opinion that retention of the holding for the present seems justified pending further developments. (per Mr. O W Anderson).

2/4/32
FWFohey

By signing copy of our letter of 1/28, Messrs. Perkins, Allen, Thorne and Halsted approve of purchasing high grade state or municipal issues with the accumulated income balance on hand in the trust.

485

1/26/32
Jacoby

At a meeting of the Officers' Investment Committee held today—Messrs. Hoyt, Knox, Kilbreth, Anderson, Torrance and Jacoby present—the committee reviewed an order which had previously been placed, at the price shown below, to sell the following security but in view of the subsequent decline in market levels, it was deemed advisable to write the executors suggesting the cancellation of this order, pending developments:—

540 Shrs. Duke Power Co. Common
at 270

486

2/17/32
G.W.Meyding

By signing copy of our letter of February 17, 1932, Messrs. Perkins, Allen, Halsted and Thorne approve of cancelling the order placed some time ago for the sale of 540 shares of Duke Power Co. Capital stock, at a price of 270 or better.

(Continued on next page)

Petitioners' Exhibit C.

487

9038 Ttee. ANGIER B. DUKE, Jr. u/w Angier B. Duke

7/25/30 We today received approval of Messrs.
PJacoby Perkins, Allen and Halsted (Mr. Thorne being in Europe) of our suggestion to invest \$35,000 of the \$40,603.91 Income Cash balance of this Trust in suitable tax-free municipal bonds.

8/15/30 We today received approval of J. C. Thorn
PJacoby of the purchase of \$15,000 City of Detroit 4 1/4s, 1951, and \$20,000 City of Baltimore 4s, 1957.

488

11/12/30 By signing and returning to us copy of our
Chapuis letter dated November 10th, Messrs. Thorne, Perkins, Allen and Halstead indicate their approval of investing the accumulated income balance of \$37,767.79 in the purchase of suitable tax-free municipal securities.

12/9/30 By signing and returning to us copy of our
Chapuis letter dated December 5th, to William R. Perkins, Messrs. Thorn, Perkins, Allen and Halsted indicate their approval of the sale of 3/6th of a share of the Standard Oil Company of Indiana Capital stock.

489

1/14/31 By signing and returning to us copy of our
Chapuis letter dated January 9th, to William R. Perkins, the former executors, Messrs. Allen, Thorn and Halsted approves of the sale of \$6,000 Par Value Board of Education of the City School District of the City of Cleveland, Ohio 6s due June 1st, 1932 and 1933 to raise in the neighborhood of \$60,000 in order to make payments ordered in the decree of the

Petitioners' Exhibit 6.

490

Surrogate's Court settling the account of the trustee.

2/3/31
PJacoby

At a meeting of the OFFICERS' INVESTMENT COMMITTEE held today—Messrs. Cardozo, Anderson, Kilbreth, and Jacoby present—this account was reviewed.

2/5/31
PJacoby

INVESTMENT COMMITTEE reviewed this account.

2/10/31
RLGould

Under date of 2/9, W. R. Perkins acknowledged our letter of the 6th inst. and says: "The executors have no comments to make". Our letter of the 6th stated that our Committee had reviewed the securities and no changes were recommended.

491

3/10/31
FWFohey

By signing the copy of our letter of February 27th, Messrs. Perkins, Allen and Thorne approve of purchasing tax-free municipal issues with the accumulated income balance of approximately \$60,000 now on hand.

3/20/31
Chapuis

Copy of our letter to Mr. Perkins returned with Mr. Halsted's signature affixed thereto, signifying his approval of the purchase of \$75,000 City of Philadelphia, Pa. 4¼s due 2/27/81/51 for the investment of the income cash on hand.

492

5/27/31
Chapuis

Our letter dated May 19th to Mr. W. R. Perkins returned with his signature and those of Messrs. Allen, Thorn and Halsted affixed thereto indicating their approval of the purchase of suitable tax free municipals to replace the \$6000 State of Montana 5½s due July 1, 1941 which have been called for payment July 1, 1931 at Par.

Petitioners' Exhibit 6.

6/19/31
Chapuis

Our letter dated June 15th to Mr. W. R. Perkins returned with his signature and those of Messrs. Allen, Thorn and Halsted affixed thereto indicating their approval of the purchase of suitable tax free municipals to replace the \$4000 Hudson County New Jersey 4½s which mature July 1st, 1931. 493

7/9/31
Chapuis

Copy of our letter dated 7/6 to William R. Perkins returned with his and the other former executors' signatures affixed thereto indicating their approval of the purchase of tax frees for the reinvestment of the funds received through the sale of \$12,000 County of Duval 5s, due 1950, which bonds we advised were sold at a price of 98¼ net. 494

7/9/31
FWFohey

By signing copy of our letter of 6/26, Messrs. Thorne, Perkins, Allen & Halsted approve of offering for redemption at a price not under par, \$12,000 Duval County Florida Special Tax School District #1 5% bonds. They indicate, however, that they do not desire the Trust to take a loss on the bonds. Inasmuch as our inventory price is 100, there will be no loss if the price of par or better is obtained. Orders were given to Mr. DiPosch with instructions of Mr. Anderson—Price of 98¼ was offered, which we accepted. 495

9038 Ttee. ANGIER B./DUKE, Jr. u/w Angier B. Duke

8/7/31
FWFohey

Letter dated 8/6, W. R. Perkins' secretary returns to us the duplicate copy of our communication of 8/5 with the signatures of Mr. Allen and Mr. Halsted affixed thereto, as an indication that they approve of investing the accumulated income balance now on hand in

Petitioners' Exhibit 6.

496

suitable tax-free municipal securities. Mr. Perkins' secretary advises us that Messrs. Thorne and Perkins are out of the city at the present time, which accounts for their not signing the duplicate.

8/20/31
RLGould

INVESTMENT COMMITTEE reviewed this trust and recommended that a check be made of the present condition of the less well known municipal issues, including particularly county bonds.

497

9/4/31
RLGould

Under date of September 3rd, Mr. W. R. Perkins has answered our inquiry of September 2nd, in reference to the sale of the warrants expiring Oct. 1. on the Aluminium, Ltd. stock. He says "Replying to yours of the 2nd, do you consider yourselves authorized by the terms of the Trust to exercise these warrants and make that kind of an investment. While we think well of the future of the company and realize what we hope is the abnormal lowness of all things now, it is not an investment for trust funds." We are accordingly proceeding to sell the warrants.

498

9/10/31
RLGould

A list of municipal issues to which reference was made by the Investment Committee 8/20/31 was submitted to O W Anderson.

10/1/31
FWFohey

Letter dated 9/29, W R Perkins advises that he agrees with our opinion that it would be well to await developments before depositing City of Asheville NC bonds with Protective Committee.

10/16/31
Chapuis

Referring to our diary of August 7th, we have received Messrs. Thorn and Perkins

Petitioners' Exhibit 6.

approval by signing and returning copy of our letter dated August 15th. 499

11/9/31
FWFohey

By signing copy of our letter of 11/5, Messrs. Perkins, Thorne, Allen and Halsted approve of purchasing additional tax-free state or municipal securities with the accumulated income balance on hand.

12/17/31
Chapuis

The American Tobacco Company has authorized Clark Dodge and Co. to purchase until December 21st the common stock at \$80 per share of the American Cigar Company. On December 12th we advised Mr. William R. Perkins of this and he returned letter with his signature and those of the other three former executors affixed thereto indicating that they favor accepting the offer for the 100 shares held in each account. 500

12/29/31
Chapuis

Copy of our letter dated December 21st to William R. Perkins returned with his signature and those of the other three former executors affixed thereto indicating their approval of the purchase of State or Municipal issues exempt from Federal Income tax with the funds made available through the sale of 100 shares of American Cigar Company Common and the income balance of \$28,230.54. 501

1/12/32
Jacoby

At a meeting of the OFFICERS' INVESTMENT COMMITTEE held today—Messrs. Hoyt, Knox, Anderson, Torrance and Jacoby present—this account was reviewed.

1/4/32
FWFohey

Under date of 12/28, Forrest Hyde advises that our letter of the 16th addressed to W R Perkins has been referred to him for reply. Our letter of which he speaks was a formal

Petitioners' Exhibit 6.

502

advice that the Lehigh Valley Coal Corp had omitted the dividend ordinarily payable January 1st on the Preferred stock. In this connection, Mr. Hyde points out that the market value of this stock is approx. \$8 a shr. and even though the dividend has been passed "We see no reason to liquidate it at these levels. If you know of any reason that it should be liquidated, I will appreciate your letting me know." In reply, under date of 12/31, we are giving a brief resumé of the operations of the corporation and are advising that we quite agree with Mr. Perkins' opinion that retention of the holding for the present seems justified pending further developments (per Mr. O. W. Anderson).

503

2/4/32
FWFohey

By signing copy of our letter of 1/28, Messrs. Perkins, Allen, Thorne and Halsted approve of purchasing high grade State or Municipal issues with the accumulated income balance on hand in the trust.

504

Stipulation Relating to Printing of Record.

505

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT.

B. T. A. No. 76031.

CITY BANK FARMERS TRUST COMPANY, as Trustee of a
Trust Under the Last Will and Testament of ANGIER
B. DUKE, Deceased, for the Benefit of ANTHONY NEW-
TON DUKE,

Petitioner,

506

—against—

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

B. T. A. No. 76046.

CITY BANK FARMERS TRUST COMPANY, as Trustee of a
Trust Under the Last Will and Testament of ANGIER
B. DUKE, Deceased, for the Benefit of ANGIER B.
DUKE, JR.,

Petitioner,

507

—against—

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

IT IS STIPULATED AND AGREED between the parties to the
above-entitled cases, by their undersigned counsel, subject
to the approval of the Court, that in printing the con

Stipulation Relating to Printing of Record.

508 solidated record of said cases, as certified by the Clerk of the United States Board of Tax Appeals and filed in the office of the Clerk of the Circuit Court of Appeals for the Second Circuit, the following pages of such certified record may be omitted:

Pages 123, 124, 125, 126, 127, 129, 130, 131, 132, 133, 135, 137, 138, 139, 140, 141, 142, 144, 146, 147, 148, 149, 150, 151 and 152, which excluded pages are parts of the income tax returns, Respondent's Exhibits "A", "B", "C" and "D", consisting of schedules and instructions, and contain no factual matter which is relevant or material to the issues on review, or factual data not otherwise appearing in the record as modified by this stipulation.

509

IT IS FURTHER STIPULATED AND AGREED that in lieu of the information shown on page 123 of the certified record there be printed, immediately following the printing of page 122 thereof, a statement that Schedule "E" of the return, omitted from the printed record, shows the receipt of \$71,833.26 from obligations of a state, territory or political subdivision thereof, and the receipt of \$513.51 from Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of U. S. possessions; and that in lieu of the information shown on page 129 of the certified record there be printed, immediately following the printing of page 128 thereof, a statement that Schedule "E" of the return, omitted from the printed record, shows the receipt of \$71,381.79 from obligations of a state, territory, or political subdivision thereof, or the District of Columbia, and the receipt of \$514.10 from Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and U. S. possessions.

510

IT IS FURTHER STIPULATED AND AGREED that if this stipulation is approved by order of the above court, a copy of this

Stipulation Relating to Printing of Record.

stipulation and the order entered thereon by said court 511
be printed as part of such record.

Dated, October 5, 1939.

GEORGE CRAVEN,
Counsel for Petitioners.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue,
Counsel for Respondent.

Approved, Oct. 11, 1939.

CHARLES E. CLARK,
U. S. C. J.

512

513

514

Praeceptum for Record.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT.

B. T. A. Docket No. 76031.

CITY BANK FARMERS TRUST COMPANY, as Trustee of a
Trust Under the Last Will and Testament of ANGIER
B. DUKE, Deceased, for the Benefit of ANTHONY NEW-
TON DUKE,

515

Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

B. T. A. Docket No. 76046.

CITY BANK FARMERS TRUST COMPANY, as Trustee of a
Trust Under the Last Will and Testament of ANGIER
B. DUKE, Deceased, for the Benefit of ANGIER B.
DUKE, JR.,

516

Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

To the Clerk of the United States Board of Tax Appeals:

You are hereby requested to prepare, transmit and deliver
to the Clerk of the Circuit Court of Appeals for the Second
Circuit a consolidated transcript of the record in the above-

Praecepta for Record.

entitled cases which were consolidated by order of said Court entered on August 21, 1939, said record to be prepared and transmitted as required by law and the rules of said Court in connection with the petitions for review by said Circuit Court of Appeals heretofore filed therein by the petitioners, and you are requested to include therein copies, duly certified as correct, of the following documents and entries: 517

1. Docket entries of the ~~proceedings~~ in each case before the Board.
 2. Pleadings in each case before the Board, as follows:
 - (a) Petition, including annexed copy of deficiency notice. 518
 - (b) Answer.
 3. Motion of petitioners for consolidation of cases and notation showing that motion was granted by the Board.
 4. Findings of fact and opinion of Board.
 5. Order of Board denying petitioners' motion for rehearing and reconsideration.
 6. Decision of Board in each case.
 7. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review, in each case. 519
 8. Stipulation and order of Circuit Court of Appeals for Second Circuit entered thereon for consolidation of cases.
 9. Order of Board entered in each case extending time for preparation of statement of evidence and transmission and delivery of transcript of record.
- Not included in record.

Praeceptum for Record.

- 520 10. Stipulation of facts and exhibits attached thereto.
 11. Statement of the evidence and exhibits referred to therein.
 12. This praecipe.

Dated, August 22, 1939.

GEORGE CRAVEN,
Counsel for Petitioners.

521 Service is hereby acknowledged of the foregoing praecipe this 31st day of August, 1939. No counter-praecipe will be filed.

J. P. WENCHEL,
Chief Counsel for Bureau of Internal Revenue,
Counsel for Respondents.

522

Certificate.**UNITED STATES BOARD OF TAX APPEALS****WASHINGTON**

523

Docket No. 76031.

**CITY BANK FARMERS TRUST COMPANY, as Trustee of a
Trust Under the Last Will and Testament of ANGIER
B. DUKE, Deceased, for the Benefit of ANTHONY NEW-
TON DUKE,**

Petitioner,**—against—****COMMISSIONER OF INTERNAL REVENUE,****Respondent.****and****Docket No. 76046.**

524

**CITY BANK FARMERS TRUST COMPANY, as Trustee of a
Trust Under the Last Will and Testament of ANGIER
B. DUKE, Deceased, for the Benefit of ANGIER B.
DUKE, JR.,**

Petitioner,**—against—****COMMISSIONER OF INTERNAL REVENUE,****Respondent.**

**I, B. D. Gamble, Clerk of the U. S. Board of Tax Ap-
peals, do hereby certify that the foregoing pages, 1 to 192,
inclusive, contain and are a true copy of the transcript of
record, papers, and proceedings on file and of record in my
office as called for by the Praeceptum in the appeals as above
numbered and entitled.**

525

**In testimony whereof, I hereunto set my hand and affix
the seal of the United States Board of Tax Appeals, at
Washington, in the District of Columbia, this 18th day of
Sept. 1939.**

**B. D. GAMBLE,
Clerk, United States Board of Tax Appeals.**

(Seal)

BLANK PAGE

[fol. 176] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT, OCTOBER TERM, 1939

Nos. 158-159

(Argued March 20, 1940. Decided May 27, 1940)

CITY BANK FARMERS TRUST COMPANY, as Trustee of a Trust
Under the Last Will and Testament of Angier B. Duke,
Deceased, for the Benefit of Anthony Newton Duke, Peti-
tioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

CITY BANK FARMERS TRUST COMPANY, as Trustee of Trust
Under the Last Will and Testament of Angier B. Duke,
Deceased, for the Benefit of Angier B. Duke, Jr., Peti-
tioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Petitions by City Bank Farmers Trust Company as trustee of trusts under the will of Angier B. Duke, deceased, for [fol. 177] the benefit of Anthony Newton Duke and Angier B. Duke, Jr., respectively, for the review of decisions of the United States Board of Tax Appeals which determined deficiencies in income taxes for the year 1931. Decisions affirmed.

Before L. Hand, Augustus N. Hand and Chase, Circuit
Judges

Rollin Browne, George Craven and Mitchell, Taylor,
Capron & Marsh, Counsel for Petitioners.

Samuel O. Clark, Jr., Assistant Attorney General, Sewall
Key and Lee A. Jackson, Counsel for Commissioner of In-
ternal Revenue.

AUGUSTUS N. HAND, Circuit Judge:

The petitioner, a New York trust company, in September, 1923, became trustee under the will of Angier B. Duke. The will created two trusts, one for the benefit of Anthony Newton Duke, the other for the benefit of Angier B. Duke, Jr., each a son of the testator. The principal constituting the

trust for Anthony Newton Duke was \$3,844,663.23, and for Angier B. Duke, Jr., was \$3,844,608.23.

On January 2, 1931, the Surrogates' Court of New York County made a decree in a proceeding for the settlement of the trustee's accounts for the period from February 26, 1926 to December 31, 1929, whereby that court authorized [fol. 178] the petitioner to retain and pay to itself out of the corpus of the trust for Anthony Newton Duke \$38,641.71, and out of the corpus of the trust for Angier B. Duke, Jr., \$38,641.06, as compensation for its services. The petitioner paid to itself the sums fixed by the court as commissions on principal. The amounts thus paid were not deducted by it in its income tax return for the taxable year 1931, but it now asks for a determination of overassessment because of such payments from the principal of the respective trusts. Deductions for commissions for receiving and paying out income of the trusts during the taxable year were allowed by the Commissioner and have not since been questioned.

The decedent's will provided that the trustee should hold the corpus of each trust for the designated beneficiary and collect the income thereof and apply the same to the support, education and maintenance of the beneficiary for his life and after his death for the support, education and maintenance of his lineal descendants, payments, applications and distributions during his minority to be under the control and discretion of the trustee. There were various testamentary provisions for disposing of income of the trusts not applied for support, education and maintenance and accumulated during the minority of the testator's sons.

The duties of the petitioner as trustee of the respective trusts consisted generally in causing its investment committee to review several times each year the securities comprising the corpus; selling securities and reinvesting the proceeds in other stocks and bonds; collecting interest and dividends; paying expenses of the trusts; distributing income to beneficiaries; keeping books of account; rendering statements to the interested parties and preparing and filing income tax returns.

The current diary recording the activities of the trustee in the trust for Anthony Newton Duke showed 18 items in [fol. 179] the year 1931, while in the trust for Angier B. Duke, Jr., it showed 19 items. The investments referred to were all stocks and bonds.

The Revenue Act of 1928, in providing for deductions in computing taxable income, contains the following provisions:

"Sec. 23. Deductions from gross income.

"In computing net income there shall be allowed as deductions:

"(a) Expenses.—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, or property to which the taxpayer has not taken or is not taking title or in which he has no equity."

The pertinent capital transactions in the two trusts during the year 1931 were relatively few. They consisted of sales of securities in the trust for Anthony Newton Duke to furnish sufficient cash to pay the commissions allowed out of principal by the Surrogate, an investment in tax free municipal bonds in place of \$18,000 of similar bonds which were redeemed, a sale of 100 shares of stock of American Cigar Company for \$7,996 and of some warrants on stock of Aluminum Ltd. for \$238.10. Capital transactions in the trust for Angier B. Duke, Jr., were almost identical.

[fol. 180] The Board of Tax Appeals, by a divided vote, sustained the Commissioner in holding that the commissions computed on receipts of and payments from the principal of the trusts were not deductible, for the reason that the trustee was not carrying on a "trade or business". We hold that in caring for the trust estate the trustee was like an individual engaged in investing his funds in stocks and bonds and that such a person cannot be regarded as engaged in business and, therefore, is not entitled to be allowed any deduction for expenses incurred in investing and supervising the estate.

The trusts of which the petitioner was trustee were family trusts of the ordinary type and though the testator gave to the trustee broad powers of investment and reinvestment and authority to retain any of the testator's investments, he

added the caution "to be more careful as to the security of the funds than as to the acquisition of higher rates of interest, my desire being to have my property prudently and securely managed rather than hazarded in what may promise great gains."

In each trust a far greater amount of income was accumulated during the year 1931 than was sufficient to pay the commissions allowed by the Surrogates Court on receipts and payments of principal. Though these commissions amounting to \$38,641.71 in the trust for Anthony Newton Duke and \$38,641.06 in the trust for Angier B. Duke, Jr., were actually paid out of the principal of the respective trusts, the petitioner seeks to have them allowed as deductions from the income accumulated during the year 1931 in determining the net income for that year taxable against the trustee. In spite of the fact that the allowance of such deductions from income would prima facie seem strange in view of the fact that the trustee necessarily paid the commissions from capital, the deduction might be permissible under the statute if the commissions be regarded as [fol. 181] ordinary expenses of one engaged in carrying on business on behalf of those beneficially interested in the trusts. The primary difficulty with allowing the deduction is that a passive recipient of income or a mere investor, either in his own capacity or through an agent, is not regarded as "carrying on any trade or business." *Van Wart v. Commissioner*, 295 U. S. 112; *Higgins v. Commissioner*, decided by Circuit Court of Appeals of the Second Circuit, May 6, 1940; *Kane v. Commissioner*, 100 F. (2d) 382, (C. C. A. 2); *Miller v. Commissioner*, 102 F. (2d) 476, (C. C. A. 9). Whether the activities of a taxpayer are sufficient to place him in the category of one engaged in carrying on a business is largely a matter of degree. *Foss v. Commissioner*, 75 F. (2d) 326, (C. C. A. 1). Undoubtedly the trust company, engaged as it is in administering hundreds of trusts, was carrying on a business and in computing its individual income taxes could properly claim deductions for its ordinary and necessary expenditures. But it is another thing for it to deduct from income which it has accumulated during a certain year its compensation for acting as trustee when its activities have consisted in making investments and in ordinary administration and supervision of the trusts. It was not, and one may fairly say it could not be, dealing in the trust securities like a trader in stocks and bonds. The

natural and legal limitations of a trustee differ fundamentally from those of an active speculator and do not place such a fiduciary in the category of one carrying on a business. *Raffing v. Burnet*, 47 F. (2d) 859, (C. C. A. 8).

The case of a ward who, under the decision in *Van Wart v. Commissioner*, 295 U. S. 112, is precluded from deducting legal fees paid by his guardian to recover income due his estate seems hard to distinguish from that of the petitioner in the case at bar. Neither, we think, falls within the provisions of Sec. 23 (a) because ward, guardian and trustee [fol. 182] will under ordinary circumstances fail to establish that he is carrying on a trade or business.

The chief argument against treating the petitioner like a custodian, guardian or individual investor is that by administrative practice trustees have generally been treated by the taxing authorities as carrying on a business, however limited their activities may in fact have been. But the departmental rulings relied upon by the taxpayer were not promulgated by the Secretary of the Treasury and, therefore, are of little aid in interpreting the statute. *Biddle v. Commissioner*, 302 U. S. 573, 582. Accordingly we are confronted with a situation where there has been no decision by the Supreme Court or by a Circuit Court of Appeals in regard to the status of a trustee who has been confined in his activities to investing the trust property, administering it in the customary manner and supervising the estate. In spite of the practice of the tax department to treat such a trustee as though engaged in business we see no rational ground for distinguishing his position from that of a guardian, custodian or individual investor, and are therefore impelled to disallow the deductions prayed for, as did the Commissioner and the Board of Tax Appeals.

Orders affirmed.

[fol. 183] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND
CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 12th day of June, one thousand nine hundred and forty.

Present: Hon. Learned Hand, Hon. Augustus N. Hand,
Hon. Harrie B. Chase, Circuit Judges.

No. 158

CITY BANK FARMERS TRUST Co., as Trustee, etc., Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said Board in accordance with this decree.

D. E. Roberts, Clerk.

[fol. 184] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. City Bank Farmers Trust Co., as Trustee, etc., v. Commissioner of Internal Revenue. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed June 12, 1940. D. E. Roberts, Clerk.

[fol. 185] **UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT**

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 12th day of June, one thousand nine hundred and forty.

Present: Hon. Learned Hand, Hon. Augustus N. Hand, Hon. Harrie B. Chase, Circuit Judges.

No. 159

CITY BANK FARMERS TRUST Co., as Trustee, etc., Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said Board in accordance with this decree.

D. E. Roberts, Clerk.

[fol. 186] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. City Bank Farmers Trust Co., as Trustee, etc., v. Commissioner of Internal Revenue. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed June 12, 1940. D. E. Roberts, Clerk.

[fol. 187] UNITED STATES OF AMERICA,
Southern District of New York:

I, D. E. Roberts, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 186, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cases of City Bank Farmers Trust Company, as Trustee of a Trust under the Last Will and Testament of Angier B. Duke, Deceased, for the Benefit of Anthony Newton Duke, v. Commissioner of Internal Revenue; City Bank Farmers Trust Company, as Trustee of a Trust under the last Will and Testament of Angier B. Duke, Deceased, for the Benefit of Angier B. Duke, Jr., v. Commissioner of Internal Revenue, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this third day of September, in the year of our Lord one thousand nine hundred and forty, and of the Independence of the said United States the one hundred and sixty-fifth.

D. E. Roberts, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

BLANK PAGE

[fol. 188] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1940

No. 408

ORDER ALLOWING CERTIORARI—Filed February 10, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 189] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1940

No. 409

ORDER ALLOWING CERTIORARI—Filed February 10, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.